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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1954

No. 251

ROBERT SIMMONS, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 30, 1954

CERTIORARI GRANTED OCTOBER 14, 1954

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**STATEMENT UNDER RULE 10(b) OF THE
RULES OF THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

(Caption—53 CR 169)

• • •

Now comes ROBERT SIMMONS, the defendant-appellant in the above-entitled cause, by KARL M. MILGROM, his attorney, and, pursuant to Rule 10(b) of the United States Court of Appeals for the Seventh Circuit, states as follows:

1. This proceeding was commenced by the filing of an indictment by the Grand Jury on March 12, 1953;

2. The indictment named ROBERT SIMMONS as a defendant. The other party to the suit and named in the indictment caption was the UNITED STATES OF AMERICA;

3. The defendant entered his plea of not guilty on May 19, 1953;

4. Following the indictment and pending trial, the defendant was allowed to remain at liberty by the trial court, the defendant being then admitted to bail taken in the amount of ONE THOUSAND DOLLARS (\$1,000.00);

5. The trial was had on September 18, 1953, without a jury before the Honorable JULIUS J. HOFFMAN, Judge of the United States District Court;

6. Said Judge JULIUS J. HOFFMAN on September 18, 1953, found the defendant, ROBERT SIMMONS, guilty as charged in the indictment and sentenced the defendant to two (2) years imprisonment, the execution of such sentence being then stayed for ten (10) days, and the defendant being allowed to remain at large during that time on the ONE THOUSAND DOLLAR (\$1,000.00) bond previously executed by him;

7. On September 28, 1953, the defendant, ROBERT SIMMONS, filed a notice of appeal; and

8. On September 28, 1953, the trial court admitted the defendant to bail then taken in the amount of ONE THOUSAND DOLLARS (\$1,000.00), pending appeal to the United States Court of Appeals for the Seventh Circuit.

Karl M. Milgrom
Attorney for Defendant-Appellant

DOCKET ENTRIES

(The following are the complete docket entries to and including October 23, 1953.)

(Caption—53 CR 169)

• • •

3/12/53 Filed Indictment - 1 p. (JS-2)
 " " " Order to issue bench warrant & fix bond at
 \$1,000.00 - BARNES, J.
 Iss. bench warrant with copy of indict. att. rw
 4-15-53 Filed Appearance Bond of deft. (\$1,000.00) P
 4-22-53 Filed Bench Warrant ret'd. served. \$11.30 P
 4-27-53 Filed appearance of Karl M. Milgrom s
 5-19-53 Deft enters plea of not guilty & es contd generally-
 Perry, J s
 5-20-53 Mld ntc
 MAY 22 1953 Cause Reassigned to Calendar of Judge
 Hoffman
 6-29-53 To Gov & by agreement cause set for trial on Sept.
 18, 1953-Hoffman, J

• • •

" " " Filed notice
 " " " Mld ntc s
 6-29-53 Mot of Gov & by agreement cause set for trial on
 Sept. 18, 1953-Hoffman, J
 6-30-53 Mld ntc s
 9-18-53 Fld subp d.t. (Otto Kerner, Jr., U. S. Atty) ret'd
 served

- 9-18-53 Filed Affidavit in opposition to motion to quash subpoena (3)
- 9-18-53 Mr. Otto Kerner Jr. & Kline Weatherford appeared in ans to subpoena duces tecum & lv gv Govt to file mo to quash said subpoenas & deft gv lv to file affidavit in opposition to said mo & mo of Gov to quash subpoena duces tecum served upon Otto Kerner & Kline Weatherford be & is alld-Hoffman, J.
- 9-21-53 Mld ntes s
- 9-18-53 Cause called for trial. Jury waived. Evidence heard, arguments heard finding of guilty, *judgment* on the finding of guilty. Deft sentenced in the custody of the Atty Gen for a period of 2 yrs. Execution stay for period of 10 days-same bond to stand on appeal - Hoffman, J. JS3
- 9-18-53 Filed Jury Waiver
- " " " Filed motion for judgment of acquittal (4)
- 9-22-53 Mld ntes s
- 9-21-53 Issued commitment & copies to U. S. Marshal
- 9-28-53 Filed Notice of Appeal of Defendant-appellant (1)
- " Mailed Copy of Notice of Appeal to U. S. Atty., and copy with statement of docket entries to U. S.-C. A., 7th Cir.
- " Enter order admitting defendant Robert *Simmons*, to bail in the sum of \$1,000.00 pending appeal of the judgment entered herein on Sept. 18, 1953 to the U. S. C. A. Seventh Circuit -DRAFT-Hoffman, J. (1)
- Mailed notice to Attys. 9-28-53 AND ALSO Mailed notice to U. S. Marshal
- 9-28-53 Filed Bond on appeal (2)B
- 10-6-53 Order extending time for filing by Robert *Simmons*, defendant-appellant, of his *deisgnation* of contents if record on appeal, to and including October 23, 1953; giving him leave to substitute a photostatic or printed copy for each of the original exhibits received in evidence, herein; requiring the Official

Court Reporter to mark such photostatic and printed copies as the original exhibits are marked; requiring Clerk of this Court to certify and incorporate such photostatic and printed copies of all said original exhibits in the record on appeal, and to forward such copies to the Clerk of the Court of Appeals for the Seventh Circuit on the appeal taken from the judgment entered on September 18, 1953-Hoffman, J.
DRAFT

10-7-53 Mld ntes Atty & U. S. s

10-23-53 Filed Defendant-Appellant's Designation of record on appeal (2)

" Filed Defendant-Appellant's Statement Of Points (1)B

• • •

INDICTMENT

Filed March 12, 1953)

(Caption—53 CR 169)

• • •

The March 1953 Grand Jury charges:

That on or about the ninth day of February, 1953, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division,

ROBERT SIMMONS,

the defendant, being a male person who is required to and did register under the provisions of the Universal Military Training and Service Act, and who duly became a registrant with Local Selective Service Board Number 150, 220 North Sheridan Road, Waukegan, Illinois, and was duly classified in Class 1-A, and was ordered to report for induction by said Local Board, and who did report for induction as ordered, and was examined and qualified for induction,

and who was thereupon charged with the duty of submitting to induction, in accordance with the provisions of the Universal Military Training and Service Act, and the rules and regulations thereunder, more particularly Regulation 1632. 14(b)(5), then and there unlawfully, wilfully, knowingly and feloniously did neglect and fail and refuse to perform the duty of submitting to induction; all in violation of the Universal Military Training and Service Act, Section 462, Title 50, App., United States Code.

A TRUE BILL:

[Signature]

Otto Kerner Jr
United States Attorney

• • •

SUBPOENA DUCES TECUM

(Filed September 8, 1953)

Case No. 53 CR 169

UNITED STATES DISTRICT COURT
Northern District of Illinois

**THE PRESIDENT OF THE UNITED
STATES OF AMERICA**

To OTTO KERNER, JUNIOR, United States District Attorney;
and KLINE WEATHERFORD, Agent in Charge of the Chi-
cago Office of the Federal Bureau of Investigation;

—GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you attend before the Honorable JULIUS J. HOFFMAN one of the Judges of the United States District Court for said District, on the eighteenth (18th) day of September, A.D. 1953, at 10:00 o'clock in the forenoon and from day to day thereafter until the below men-

tioned cause is determined in Room 245 United States Court House in Chicago, in said District, to testify and give evidence in a certain cause now pending and undetermined in said Court, wherein UNITED STATES OF AMERICA is Plaintiff and ROBERT SIMMONS

Defendant, on the part of said ROBERT SIMMONS And that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid, a certain Federal Bureau of Investigation investigative report submitted to ROY WEST, as Hearing Officer of the United States Department of Justice, in connection with the hearing conducted by said Hearing Officer relating to the conscientious objector Selective Service status of said ROBERT SIMMONS. And this you shall in nowise omit, under the penalty of the law in that case made and provided. To the Marshal of the Northern District of Illinois to execute and return in due form of law

SEAL

Roy H. Johnson

COPY

Clerk

DATED: 9-16-53

By William E. Keeley, Jr.

Deputy Clerk

• • •

**AFFIDAVIT IN OPPOSITION TO
MOTION TO QUASH SUBPOENA**

(Filed September 18, 1953)

(Caption—53 CR 169)

• • •

STATE OF ILLINOIS

COUNTY OF COOK

} SS.

KARL M. MILGROM, being duly sworn upon his oath,
deposes and says:

I am a member of the bar of this Court. My offices are at 19 South LaSalle Street, Chicago 3, Illinois. I am the attorney of record for the defendant herein;

The defendant is charged by indictment with the offense of a violation of Title 50, Appendix, Section 462, United States Code, in refusing to submit to induction. The defendant has pleaded not guilty. Upon trial the defendant will contend that a judgment of acquittal ought to be entered because the draft board order commanding him to appear for induction is void because the draft boards violated the rights of defendant and illegally denied his claim for deferment as conscientious objector, opposed to both combatant and noncombatant service. The defendant expects to show that the actions of the local board and appeal board are illegal, *arbitrary* and capricious. He will attempt to show that the determination of the Special Assistant to the Attorney General in finding that the defendant was not a conscientious objector, opposed to both combatant and non-combatant military service, is without basis in fact, contrary to law, arbitrary and capricious;

Pursuant to the requirement of Section 6 (j) of the Universal Military Training and Service Act, the Department of Justice made an inquiry as to the defendant before hearing was held by the hearing officer. This inquiry was conducted by one or more Federal Bureau of Investigation agents, the name or names of whom are unknown to the defendant. The results of the inquiry were reduced to writing and made into a report to the hearing officer. The report, upon information and belief, contains unfavorable but illegal and hearsay evidence and statements that were relied upon by the hearing officer in his adverse report to the Department of Justice and by the Special Assistant to the Attorney General in his findings and denial of defendant's claim. It is necessary that the defendant examine and see such report relied on against him in the administrative agency in order to properly defend at the trial of the indictment in this case;

The report, upon information and belief, is in the hands

of either the United States District Attorney or the Agent in Charge of the Chicago Office of the Federal Bureau of Investigation. Each of these persons has been duly served with subpoena duces tecum to produce such report upon the trial of this action;

The defendant is not engaged in a fishing expedition. The production of the Federal Bureau of Investigation report and the giving of testimony required by the subpoena are material and necessary for the defense to the indictment upon the trial of this case. They will show affiant is informed and believes and so states the fact to be: that defendant is a matter of law, a conscientious objector and not liable for unlimited service; and that defendant did not get a fair resume of adverse evidence in said report. Even though the report sought by the subpoena may be claimed to be confidential by the Government, it must be produced because such document is a part of and forms the basis of the administrative determination and action supporting the indictment which is questioned by the defendant;

Since the validity of the administrative determination cannot be established unless and until there is such examination of the entire administrative record and testimony relied upon by the Department of Justice, which Department recommended the denial of the claim for classification as conscientious objector opposed to all military service, it is necessary for the Court to deny the motion to quash the subpoena;

If the motion to quash the subpoena is granted, the defendant will be deprived of right to due process of law, contrary to the Fifth Amendment to the United States Constitution and rights guaranteed by the Selective Service Regulations and Rule 17 (a) (c) of the Federal Rules of Criminal Procedure;

If the motion to quash the subpoena is granted, the defendant will be denied his right to confrontation of witnesses that have developed the evidence for the case against him. The draft board orders which set in motion the chain of events resulting in the prosecution are supported by the

determination made by the hearing officer of the Department of Justice. The defendant is entitled to examine the entire record of evidence in the Federal Bureau of Investigation report as to the reasons for recommending denial of his claim for classification as a conscientious objector under the decision by Judge Hand in *Kulick v. Kennedy*, 157 F. 2d 811 (C. A. 2d); and

A denial of the right to offer into evidence the Federal Bureau of Investigation report in this case will be prejudicial and will deprive the defendant of his right to be confronted by evidence given by the witnesses responsible for denial of the conscientious objector status. If he is denied the right of confrontation of the evidence by these witnesses there will be a denial of constitutional rights secured by the Sixth Amendment to the United States Constitution.

Karl M. Milgrom

Subscribed and sworn to before me this
18th day of September, 1953.

Emma E. Jacob

Notary Public.

[SEAL]

• • •

ORDER QUASHING SUBPOENA

(Filed September 18, 1953)

Hoffman, J.

September 18, 1953

(Caption—53 CR 169)

• • •

This day come the parties by their counsel and Mr. Otto Kerner, Jr., United States Attorney and Mr. Kline Weatherford, Special Agent in charge, Federal Bureau of Investigation, Chicago, Illinois, U. S. Department of Justice, Chicago, Illinois, appear in answer to subpoena duces tecum served upon them and it is

ORDERED that leave be and is hereby granted to the Government to file its motion to quash said subpoena duces tecum and that leave be and is hereby granted to the defendant to file an affidavit in opposition to said motion to quash and upon due consideration the Court being fully advised in the premises it is

FURTHER ORDERED that the motion to quash the subpoena duces tecum served upon said Mr. Otto Kerner, Jr., and Mr. Kline Weatherford be and the same is hereby allowed and that said subpoena duces tecum be and the same are hereby quashed.

• • •

MOTION FOR JUDGMENT OF ACQUITTAL

(Filed September 18, 1953)

(Caption—53 CR 169)

* * *

Now comes the defendant, ROBERT SIMMONS, and moves the Court for a judgment of acquittal for each and every one of the following reasons:

1. There is no evidence to show that the defendant is guilty as charged in the indictment.

2. The Government has wholly failed to prove a violation of the Act and Regulations by the defendant as charged in the indictment.

3. The undisputed evidence shows that the defendant is not guilty as charged.

4. The denial of the claim for exemption as a minister of religion by all of the draft boards, and each of them, is without basis in fact, arbitrary, capricious and contrary to law.

5. The denial of the ministerial classification is illegal, arbitrary and capricious because the draft boards employed artificial standards in determining what constitutes a minister of religion within the meaning of the Act and Regula-

tions; and they did not follow the definition of the term used in the Act and Regulations in determining the claim of the defendant as a minister of religion.

6. The denial of the ministerial classification by the draft boards was arbitrary and capricious because they illegally held that Jehovah's Witnesses and the Watchtower Bible and Tract Society, Inc., do not constitute a recognized religious organization under the Act and Regulations.

7. The denial of the ministerial classification by the draft boards was arbitrary and capricious in that they held that the performance of secular work by the defendant, alone, without determining whether it was his avocation and used his performance of secular work to defeat illegally his ministerial status because the undisputed evidence showed that he is not engaged in secular work as a main business but only incidentally to his main work of the ministry, and that, according to the Act and Regulations he is regularly and customarily engaged in teaching and preaching the doctrines and principles of a recognized church and pursues such preaching work as his vocation and does not preach incidentally to the performance of any secular work; and therefore the draft board order is illegal, contrary to law and without basis in fact.

8. The denial of the conscientious objector status by the local board and the board of appeal and the recommendation by the hearing office of the Department of Justice and by the Department of Justice to the board of appeal were without basis in fact, arbitrary, capricious and contrary to law.

9. The recommendation of the hearing officer relied upon by the Department of Justice and the board of appeal, and the report of the Department of Justice to and relied upon by the board of appeal are arbitrary, capricious and illegal because they refer to artificial, fictitious and unlawful standards not authorized by the Act and Regulations and advise the appeal board to classify according to irrelevant and immaterial lines in determining that the defendant was not a conscientious objector when a pursuit of the Act

and Regulations was the only thing for the hearing officer, Department of Justice, and appeal board to follow.

10. The undisputed evidence and the draft board records show that the local board deprived the defendant of his procedural rights to due process of law by failing to notify him of his classification following personal appearance, in that the local board failed to mail to the defendant a classification card (SSS Form No. 110) following his personal appearance as required by Section 1624.2 of the Regulations.

11. The local board deprived the defendant of procedural rights to a full and fair hearing before the board of appeal by failing to make an adequate and full written memorandum of the new additional oral evidence given by the defendant upon the occasion of his personal appearance, which new and additional oral evidence does not otherwise appear in the written papers sent to the board of appeal.

12. The undisputed evidence shows that the local draft board violated the Regulations by concluding that the defendant was not entitled to claim the conscientious objector classification because he had made the claim for exemption as a minister of religion.

13. The undisputed evidence shows that the local draft board violated the Regulations by denying the defendant his claim for classification as a conscientious objector because he had pressed before that board at his personal appearance his claim for exemption as a minister of religion.

14. The use of the secret investigative report of the Federal Bureau of Investigation without notifying or confronting the defendant with the substance of, or the parts of it, which were considered by or relied upon by the hearing officer upon the occasion of the hearing before the Department of Justice hearing officer and also the failure to include all of the evidence in the Federal Bureau of Investigation report relied upon by the hearing officer and all that appeared in the Federal Bureau of Investigation report and that was considered by the hearing officer, and also, the failure to put all of such evidence in the Federal

Bureau of Investigation report in the draft board file for the use of the board of appeal and the court, constitutes a deprivation of defendant's rights to procedural due process of law in violation of the Fifth Amendment to the United States Constitution and also is a clear and unequivocal violation of the Universal Military Training and Service Act and the Regulations promulgated thereunder. (Section 1622.1 (b)).

15. The Government has failed to prove that the defendant received from the hearing officer at his conscientious objector hearing a fair resume of any adverse evidence contained in the Federal Bureau of Investigation investigative report which was considered or relied upon by that officer at such hearing.

16. The undisputed evidence shows that the local board acted arbitrarily and capriciously and in violation of Section 1625.2 of the Regulations by refusing to reopen and consider anew the defendant's last classification of I-A upon the showing by the defendant prior to the time scheduled for his induction that such induction would result in extreme hardship and privation to his wife, which facts were not considered by that board when the defendant was so classified, resulted from changed circumstances over which he had no control, and if true, justified a change in the defendant's classification to III-A.

17. The failure of the court to compel the production of the Federal Bureau of Investigation investigative report, and the order of the court sustaining the motion to quash the subpoena duces tecum made by the Government, constitute a deprivation of the defendant's rights to due process of law upon criminal trials contrary to the Fifth Amendment to the United States Constitution and the right to confrontation guaranteed by the Sixth Amendment, and also violate the statutes and rules of court providing for

the issuance of subpoenas in behalf of defendants in criminal cases.

Karl M. Milgrom
Attorney for Robert Simmons,
Defendant.

• • •

JUDGMENT AND COMMITMENT

(Filed September 18, 1953)

(Caption—53 CR 169)

• • •

This cause this day coming on for trial comes the United States by the United States Attorney comes also the defendant Robert Simmons in his own proper person and by his counsel and *neing* informed by the Court of his right to a trial by Jury waives that right in writing in open Court the United States Attorney consenting thereto and the Court approving such waiver and thereupon this cause is submitted to the Court for trial without a Jury and the Court now having heard all the evidence adduced, the arguments of counsel and being fully advised in the premises finds the defendant guilty as charged in the Indictment and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

ORDERED AND ADJUDGED by the Court and is the sentence and judgment of the Court upon a finding of guilty that the defendant ROBERT SIMMONS be and he is hereby committed to the custody of the Attorney General of the United States or his authorized representative for and during the term and period of TWO (2) YEARS and it is

FURTHER ORDERED that execution of sentence be and the same is hereby stayed for a period of Ten (10) Days and

that the bond of the defendant heretofore filed herein shall remain in full force and effect.

Julius J. Hoffman

UNITED STATES DISTRICT JUDGE

September 18, 1953

• • •

TRANSCRIPT OF PROCEEDINGS

(Filed November 3, 1953)

[Tr. 1]

IN THE UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

(Caption—No. 53 CR 169)

• • •

TRANSCRIPT OF PROCEEDINGS had at the hearing of the above-titled cause before the Hon. Julius J. Hoffman, one of the Judges of said Court, sitting in his court room in the United States Court House, Chicago, Illinois, on September 18, 1953, at 10:00 o'clock a.m.

• • •

[Tr. 44]

(Caption—No. 53 CR 169)

• • •

Before JUDGE JULIUS J. HOFFMAN,
September 18, 1953,
2:00 o'clock, p.m.

• • •

ROBERT SIMMONS,

the Defendant herein, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

[Tr. 45]

DIRECT EXAMINATION

BY MR. MILGROM:

Q Will you state your name, please?

A Robert Simmons.

Q You are the defendant in this case?

A Yes, sir.

Q Where do you reside?

A 1400 - 16th Street, North Chicago, Illinois.

Q How old are you?

A 26.

Q Are you single or married?

A Married.

Q What is the name of your wife?

A Delpha Simmons.

Q Is she present in the court room?

A Yes.

Q Will you point her out, please?

A The first one on the bench.

Q The first in the second row, right?

A Yes, sir.

Q Wearing a blue dress?

A A blue dress, yes, sir.

Q When were you married to her?

A March 5, 1949.

[Tr. 46]

Q What is your vocation?

A I am a minister.

Q Have you any other activity?

A Yes, I clean upholstery and wash automobiles to maintain myself in the ministry.

Q Are you an ordained minister?

A Yes, I am an ordained minister.

Q When were you ordained?

A October 28, 1951.

Q Who appointed you?

A One of the representatives of the Watch Tower Bi-

ble and Tract Society.

Q What is the Watch Tower Society?

A It is the governing body of Jehovah Witnesses.

Q Are you registered with the local draft board?

A Yes, sir.

Q What is the number of that board?

A Local Board No. 150.

Q And its address?

A 220 North Sheridan Road, Waukegan, Illinois.

Q Did you file a conscientious objector form, 150, with that board?

A Yes, sir, I did.

Q Did you therein claim, by reason of your religious

[Tr. 47]

principles and beliefs, to be conscientiously opposed to war in any form?

A Yes, sir.

Q Did you therein claim to be a conscientious objector to any combatant or non-combatant service in the armed services?

A Yes, sir.

Q What kind of classification did you receive from your local board?

A 3-A and 1-A.

Q Approximately when were you so classified in 1-A?

A June, 1945.

Q When was the last time your local board classified you 1-A?

A November 26, 1951.

Q And you asked for a hearing in regard to the classification in writing within ten days from November 26, 1951?

A Yes, sir.

Q Did you get such a hearing?

A Yes, I did.

Q When was such a hearing held?

A On December 10, at 8:00 p.m.

Q What year?

[Tr. 48]

A 1951.

Q Where was such hearing held?

A At the local board, 150 - 220 North Sheridan Road, Waukegan, Illinois.

Q Who was present at the hearing?

A Mr. Reardon, a clerk, and board member, and three other board members.

Q Will you please tell the Court what was said at that hearing.

A At that hearing, I furnished evidence in support of my ministry. I told them that I started preaching as an unordained minister in December, 1950. In October, 1951, I was ordained as a minister and that had been my regular vocation since that time.

I placed a booklet with each of the board members. One of the board members asked me how much education I had, and I told him eight years in the grade school and two years of high school. He told me that his minister had to go to school for years and years before he could qualify in the ministry.

I told the board that Christ Jesus and his Apostles were called unlearned and ignorant men. The board members told me that was all, and that I could go.

Q That is all you can remember as to what was said

[Tr. 49]

at the hearing?

A Yes.

Q Did your local board, after this hearing, reopen or change your 1-A classification?

A No.

Q When were you notified that they were not reopening or changing your classification, 1-A?

A I received a letter on December 12th to that effect.

Q Did you file an appeal in writing within ten days after December 10, 1951?

A Yes, sir, I did.

Q Did you have a conscientious objector hearing be-

fore Roy West?

A Yes, sir.

Q On what date did that hearing take place?

A On August 28, 1952.

Q At what time of the day?

A Approximately 9:45 a.m.

Q What was the place of the hearing?

A It was on the fourth floor of this building, the court house here in Chicago.

Q Who was present at that hearing?

A Mr. West, my wife, and myself.

Q Will you tell the Court what was said at the hearing?

[Tr. 50]

A Yes. Mr. West said that he had my file, and also the F.B.I. report concerning my case. He also said in the report it was reported that I was hanging around pool rooms.

He asked me: "Do you do that now?" And I told him no. I asked him what else was in the report. Mr. West started to tell me then about how long he had been in the law business with some large firm here in Chicago, and that he knew all of the Justices in the Supreme Court.

He asked my wife how she was feeling, and how was I treating her. My wife said "Fine." He said he was going to recommend me for ministerial status to Washington, but that he did not have the last word on it, that Washington had the last word.

Q Do you recall now that that was all that was said?

A Yes, sir.

Q Now, how were you classified after the last hearing on your appeal?

A 1-A.

Q After such classification, did you file any additional papers with your local board?

A Yes.

Q I show you what has been offered in evidence as

[Tr. 51]

Government's Exhibit 1-W. Will you read it, please?

A (Reading):

"To Whom it may concern:"—

Q No, just read it to yourself. Did you file that letter on January 20, 1953, with your local board, 150?

A Yes, I did.

Q And now, that affidavit which is in letter form purports to be signed by Charles K. Fetter, M. D. Who is he?

A He is superintendent or head doctor at the Lake County Tuberculosis Sanitarium in Waukegan, Illinois.

THE COURT: What is the point of that inquiry? Here is a defendant who is not asserting any defense here other than the fact that he is an ordained minister and a conscientious objector.

MR. MILGROM: He is, your Honor.

THE COURT: Is there a matter of dependency involved there?

MR. MILGROM: Yes, sir.

THE COURT: Special dependency?

MR. MILGROM: Because of her poor physical condition requiring his care.

THE COURT: Was she in the hospital at that

[Tr. 52]

time?

MR. MILGROM: Yes, she was. I will bring that out.

BY MR. MILGROM:

Q With whom did you file Government's Exhibit 1-W?

A With Mr. Reardon, the clerk at the local board.

Q That was on January 20, 1953?

A Yes, sir.

Q At what time approximately in the day was that?

A It was between 10:00 and 11:00 a.m.

Q Who else was present when you gave it to him?

A There were two lady employees of the local board.

Q At that time, what did you tell Mr. Reardon?

A I told him that I was going to ask, or I would like to ask the board to reconsider my reclassification, and that

the doctor had given me an affidavit concerning my wife's physical condition.

THE COURT: Did you say you wanted him to consider your reclassification? You were never reclassified.

THE WITNESS: No, I wanted him to open my classification.

THE COURT: Were you reclassified? You mean you wanted him to reconsider your classification 1-A?

[Tr. 53]

THE WITNESS: Yes, sir.

THE COURT: You were never reclassified?

THE WITNESS: No, sir.

THE COURT: When you said reclassification, you didn't mean that?

THE WITNESS: No, sir.

THE COURT: All right.

BY MR. MILGROM:

Q You mean you wanted the board to reopen your classification?

A Yes.

Q That is what you told Mr. Reardon? At that time?

A Yes, sir, it was.

Q What else did you tell him?

A I also told him that my wife—she just told me on January 16th the doctor visited her and said that an operation was necessary in view of a serious infected gland. I also told Mr. Reardon that prior to that she had had eight ribs removed from the left side, and that when she was discharged from the hospital she will be totally dependent on me for care, care that no one else could give her.

Q What did he say?

[Tr. 54]

A He said that when the board met, they would consider the letter. That was all that was said.

Q Did you have any conversation with Mr. Reardon at any later time regarding your local board's reopening your Selective Service classification of 1-A?

A Yes, on February 2nd.

Q What year?

A 1953.

Q Where did that conversation take place?

A At local Board 150, 220 North Sheridan Road, Waukegan.

Q Who else was present besides you and Mr. Reardon?

A No one else.

Q What time of the day was this?

A It was 8:30 a.m.

Q What was said at that time?

A I asked Mr. Reardon when was the board going to meet to consider the reopening of my classification, and to consider the affidavit that the doctor had signed for me, and Mr. Reardon told me: "We are not going to consider that."

I asked Mr. Reardon what he—"what is supposed to happen to my wife when she gets out of the hospital?"

Mr. Reardon said, "That is your business. That is no

[Tr. 55]

concern of ours." So I left after that.

Q Did you communicate with any other agency of the Selective Service?

A Yes, I did.

Q That is relative to reopening your classification because of your wife's need for your care?

A Yes, sir.

Q With whom did you so communicate?

A With the State Director, Paul G. Armstrong, and the General Director, General Hershey.

Q How did you communicate with them?

A By writing.

Q On what date did you write each of those gentlemen?

A On February 3rd.

Q What year?

A 1953.

Q I show you what has been marked and offered in evidence as Government's Exhibit 1-Q. Will you look at it? Will you read that?

A Out loud?

Q Yes, please.

A (Reading):

"To Whom it may concern:

"Mrs. Delpha Simmons, wife of Robert Simmons,

[Tr. 56]

draft board registrant, is confined to the Lake County Tuberculosis Sanatorium for treatment of advanced pulmonary tuberculosis.

"Robert Simmons is the sole support of this patient and she will be dependent upon him for care when she is able to leave the hospital.

"Very truly yours,

"Charles K. Fetter. M. D."

Q That bears what date?

A That is dated February 3, 1953.

Q You sent a copy of this exhibit to both Mr. Armstrong and Mr. Hershey?

A Yes, sir, I did.

Q In the letter you sent to them, you requested their assistance in getting your classification of 1-A reopened?

A Yes, sir.

Q To your knowledge, did either the state or the national Selective Service director direct a reopening of your classification?

A No.

Q When after February 3, 1953, the date of that

[Tr. 57]

Government's Exhibit 1-Q did your wife for the first time leave the Lake County Tuberculosis Sanatorium?

A The second week in August, 1953.

Q Where did she go on so leaving the sanatorium?

A To our apartment at 1400—16th Street, North Chicago, Illinois.

Q Is there anybody living in that apartment besides yourself and wife now?

A No, sir.

Q Specifically what have you done in the care of your wife since she returned from the sanatorium?

A I do all the housework, and I have to do the shopping for groceries, prepare all meals and fix her medicine and nurse her during the night.

Q Why did you refuse to submit to induction on February 9, 1953?

A I refused to submit to induction because under the law I should have had a minister's classification, or at least 1-O in view of my conscientious objection not to participate in war in any form.

And I also thought that the board would reopen my classification due to my wife's serious condition that required my constant care after she was discharged from the hospital.

[Tr. 58]

Q Now, with regard to your conscientious objector belief, how did you acquire that belief?

A By studying the scriptures and attending the theocratic minister's school of Jehovah's Witnesses.

Q You started that approximately when?

A In the spring of 1950.

Q And you state that you have been a minister, ordained—an unordained minister commencing in 1950, then you were ordained October 28, 1951?

A Yes, sir.

Q Does your ministerial status have any connection with your conscientious objection situation?

A Yes, sir, that is the sole reason of my conscientious objection status, that of the ministry, my studying the scriptures.

The Scriptures say, "Thou shalt not kill."

When a person has made a covenant to do God's will for the rest of his life, as I have, he cannot lay that covenant aside to engage in any conflict between nations.

If I was to go into the Armed Forces, that would put restrictions upon that covenant that I have made.

Q How long have you had such a view with regard to [Tr. 59]

being against war?

A Since the spring of 1950.

Q You acquired that during your study of the Bible?

A Yes, I did.

MR. MILGROM: Your witness.

CROSS EXAMINATION

BY MR. PARSONS:

Q I show you, Mr. Simmons, Government's Exhibit 1-D which is in evidence, which is the Selective Service classification questionnaire, and ask you if you recognize that document.

A Yes, I do.

Q Did you fill out the answers that appear on that document?

A Yes.

Q Is that your signature that appears at the end of page 7 of that document?

A That is true.

Q Did you intend to leave off your signature on Series 14 to be found on page 7 of that document at that time?

A Series 14?

Q Yes.

[Tr. 60]

A That is true.

Q You recall that Series 14 is a question which allows you to indicate to the local board whether or not you claim conscientious objection to war?

A Yes, sir.

Q You did not fill it out at that time, did you?

A No, not in the year of 1948.

Q Did you at that time place this figure, 1-A, on this classification questionnaire in ink?

A Yes, I did.

Q In answer to the question:

"In view of the facts that are set forth in this questionnaire, it is my opinion that my classification should be class 1-A."

A Yes, sir, in 1948 I did.

Q I show you now Government's Exhibit 1-C which is in evidence. You recall that exhibit, do you not?

A Yes.

Q You filled out the answers that appear on that exhibit, did you not?

A Yes.

Q Now, you signed it at both page 1 and page 4, did you not?

[Tr. 61]

A Yes, I did.

Q Do you recall the date on which you filed your special form for conscientious objection?

A No, I don't remember the exact date.

Q Let me show you this exhibit again.

Do you recall that date?

A Yes, two days after I was ordained as a minister, October 30th.

Q Do you recall the date on which you received your first 1-A classification?

A No, I do not. I do not exactly remember this 1-A classification.

Q Do you recall approximately when you were first classified 1-A?

A I believe it was 1951.

Q Was it before you filed the 150 form, or after?

A I believe it was before.

THE COURT: Let me get that clear. He was classified 1-A before he filed the conscientious objector form, is that right?

MR. PARSONS: Yes.

BY MR. PARSONS:

Q Do you recall whether it was a short time before you filed the form?

[Tr. 62]

A No, it was quite a while before.

MR. MILGROM: As a matter of fact, the Selective Service record indicates that he received his first 1-A on December 23, 1948, the first entry on the minutes.

BY MR. PARSONS:

Q When you reported to the local board for your hearings, Mr. Simmons, you appeared alone, is that right?

A That is true.

Q At that time had you sent anything else to your file other than the classification questionnaire and the 150 form questionnaire?

A Will you repeat that, please?

Q Had you sent to the local board any other material besides the questionnaire, and the 150 form questionnaire before you appeared before the board?

A No, sir, not at that time.

Q That is all the literature they had on you at that time, is that true?

A Yes, sir.

Q You were allowed to go into the board meeting and explain your position; is that what you said?

A Yes, to a certain extent.

Q At that time, you stated you wanted to be a conscientious objector?

[Tr. 63]

A I did not state I wanted to be a conscientious ob-

jector. I said I was an ordained minister, and I had begun to preach as an unordained minister.

Q Did you understand at that time that it was not necessary to be an ordained minister to be a conscientious objector?

A I was just stating the facts as they were. I did not know anything about the law.

Q Did you tell the draft board that it was your impression that a minister is automatically classed as a conscientious objector?

A I told them I wanted to be classified as a minister because at that time I was a minister.

Q When you filed your 150 form, were you applying to be classified as a minister or as a conscientious objector?

A When I filed the 150 form, I had been preaching as an unordained minister up to that time.

Q Did you file the 150 form in an effort to seek conscientious objector classification, or in an effort to seek ministerial classification?

A Ministerial classification.

Q Did you ask the local board for the conscientious objector form yourself?

[Tr. 64]

A Yes, I did.

Q Let me show you Government's Exhibit 1-C again, which is in evidence. Did you read it carefully when you filled out the answer to it?

A I did not read it too carefully, but I read most of it you might say.

Q Did you, in filling out these answers, believe you were applying for ministerial classification?

A Will you repeat that question?

Q When you filled out the form, did you think you were applying to be a minister, or did you think you were applying to be classified as a conscientious objector?

A I thought I was applying for a minister's classification.

Q But you saw nothing on the form which indicated that you desired a minister's classification, did you?

A Nothing on the form, no, just a conscientious objector.

Q So that when you appeared before the board, you told the board you wanted to be a minister, didn't you?

A Yes, sir.

Q You didn't tell them you wanted to be classified as a conscientious objector?

[Tr. 65]

A I didn't tell them I wanted to be a minister. I told them that I was a minister.

Q You did not tell them you wanted to be classified as a conscientious objector?

A Naturally I wanted, yes, to be classified as a conscientious objector.

Q Well, which did you want, a conscientious objector or minister's classification?

A As a minister, I was a conscientious objector.

Q Didn't you know at that time there were many ministers in the Service that were not conscientious objectors?

A Yes, I did.

Q Did you have the impression at that time that to be a minister you had to be a conscientious objector?

A Will you repeat that?

Q Did you have the impression that in order to be a minister, you had to be a conscientious objector to war?

A Yes, in my case, personally, yes.

THE COURT: Did you mean what you said, Mr. Parsons? I think you rather misspoke yourself. What were you trying to elicit from the witness?

MR. PARSONS: The point I wanted to draw is whether or not he understood that it is not necessary for a minister to be a conscientious objector.

[Tr. 66]

THE COURT: Yes, that it did not follow be-

cause the man was engaged as a clergyman that he was necessarily a conscientious objector.

MR. PARSONS: Thank you, your Honor. That is a better wording of the question.

BY MR. PARSONS:

Q You understood at that time that it did not follow that a man who was a minister had necessarily to be a conscientious objector, did you?

A Well, all ministers do not make covenants between God and themselves.

Q What was your understanding at that time?

A At that time, I had my covenant, and I was to be a faithful captain of that covenant. If I was to turn either way, then the Scriptures at Romans 1:31, which would have applied to me, means that covenant breakers would be worthy of death.

Q Did you at that time appear before the local board to give any information concerning your conscientious objection, not concerning your ministerial situation?

A Just at that hour?

Q Yes.

A I placed a book with each member of the board entitled "God and the State."

[Tr. 67]

Q Is that book you placed there concerning ministerial objection or conscientious objection to war?

A It was a book dealing with each individual, no matter where he might live or whatever walk of life he was in, that booklet had some bearing or effect on his destiny.

Q Did it have any bearing or effect on your ministerial claim, or did it have any bearing or effect upon your conscientious objector position?

A I would say it had an effect on both.

Q Which claim were you asserting at that time?

A The ministerial claim.

Q You had filed the form 150, is that right?

A That is right.

Q You had not stated on your classification questionnaire that you were a conscientious objector, had you?

A The classification questionnaire in 1948?

Q Yes, you had not stated on that questionnaire you filed that you were a conscientious objector, had you?

A No, not in 1948.

Q You had stated at that time that you thought your classification should be 1-A, isn't that correct?

A Yes, sir, in 1948.

Q And at that time, you had filed the 150 form in

[Tr. 68]

addition to the classification questionnaire which you had presented to the board, isn't that correct?

A Yes.

Q Then when you had this hearing, you *proceeded* not to tell about your conscientious objection, but about your ministerial classification, isn't that correct?

A That is true.

Q The board gave you an opportunity to make a full statement, did it not?

A No.

Q There didn't anybody tell you to shut up?

A No, sir, they didn't tell me to shut up, but the board members indicated they were pressed for time because another fellow had to have a hearing that night.

Q They did not cut you short in the midst of your ministerial statement, did they?

A Yes, they said that was all, and I could not do it.

Q Before they told you that was all, they had given you a chance to explain your position, is that right?

A To a limited extent.

Q Didn't you say on direct examination you told them you were a minister?

A I did.

Q Didn't you testify a moment ago that you gave them

[Tr. 69]

a book they could look at?

A A booklet, yes.

Q So that you were given an opportunity, weren't you, to explain your position?

A Well, when the question arose about my education, I told the board members what education I had. One of the board members told me I didn't have enough education to qualify as a minister, and that his minister had to go to school years and years before he could qualify.

When I told him that Christ Jesus and his Apostles were called unlearned and ignorant men, they told me that was all, and I left.

Q Now, let us look at this hearing before the hearing officer.

Incidentally, when you were retained in the classification by the local board, you did not apply for an appeal, did you?

A Yes, I did.

Q You were granted an appeal?

A Yes, I was granted an appeal.

Q In the course of your appeal, you were given a hearing before the hearing officer, were you not?

A Yes, sir.

Q You were allowed to bring as many witnesses as you

[Tr. 70]

wished to your hearing, were you not?

A Well, I did not know that until now.

Q You did bring witnesses, did you not?

A I brought my wife, yes.

Q Weren't you sent a statement of notification of the hearing?

A Yes, I was.

Q Didn't that statement tell you to bring witnesses with you?

A I am not sure if it did or not now.

Q It was a mimeographed statement, was it not?

A I don't exactly remember.

Q It gave you some time in which to get ready for the hearing, did it not?

A Yes, it did.

Q How long do you remember the time was between when you received it and when you were before the Board?

A I don't exactly remember when I received it, but I do remember that at one time—

Q Would you say it was at least a week?

A Well, I would say yes, at least a week.

Q When you appeared, Colonel West ushered you into the hearing room, did he not?

A Yes, sir.

[Tr. 71]

Q He sat down?

A Yes, he did.

Q He took his time, did he not?

A Yes.

Q And he asked you questions?

A No.

Q Didn't he ask you questions?

A Well, he asked me one question.

Q And you answered the question that he asked you, did you not?

A Yes, I did.

Q He allowed you to volunteer some statements, did he not?

A I didn't know if I could volunteer some statements. I gave him one—

Q Did he ask your wife questions?

A Yes, he did.

Q She was your witness at that time?

A Yes.

Q And then you were notified, were you not, eventually, that you were classified 1-A by your Appeal Board, isn't that correct?

A Yes, sir.

Q When did you receive, Mr. Simmons, your order to

[Tr. 72]

report for induction, following that interview?

A January 6, 1953.

Q Now, you received the notice to report for induction on January 6. When did you first file with your board any claim of dependency?

A After I found out the seriousness of my wife's condition.

Q Do you remember the date?

A The date was January 16th.

Q You received your notice to report for induction on January 6, is that right?

A Yes, sir.

Q Then you filed a petition to be classified as a person with a dependent on January 16th, isn't that correct?

A On January 16th I found out the seriousness of my wife's condition.

Q When did you file your application for that classification?

A On January 20th.

Q That was 14 days, was it not, after you received notice to report for induction?

A Yes, it was.

MR. PARSONS: May it please the Court, the
[Tr. 73]

Government would like to ask the Court to take judicial recognition of a certain provision. I would like a moment to find the provision which provides a meeting of the local board—

MR. MILGROM: If you are going to argue, argue later.

THE COURT: I do not conceive that this is argument. I assure you if it is we won't continue it. Is this argument?

MR. PARSONS: Not at all.

THE COURT: Have you finished with the witness?

MR. PARSON: I am not finished. I just wanted

to make that point at this particular time.

THE COURT: All right, you may make it.

MR. PARSONS: There is a Selective Service regulation which states that a local board may not open up a classification after sending out a notice for induction, and that regulation ties in with the fact that the registrant was thereupon advised to confer with General Hershey.

THE COURT: What is the purpose of the motion?

MR. PARSONS: To show that the defendant

[Tr. 74]

should have been classified under Mr. Hershey's classification.

THE COURT: Counsel I think is right there. That is argument which you may make later. That goes to the guilt or innocence of the defendant.

MR. PARSONS: I can understand—

MR. MILGROM: I am asking, to keep the record straight, that that regulation—

THE COURT: We won't go into it.

MR. MILGROM: I didn't think it was the correct thing to do, that he wanted you to take judicial notice of it.

THE COURT: I have sustained your objection, not because it is the law or isn't the law, but because your reference to it at this time is not in order, Mr. Parsons.

By MR. PARSONS:

Q Now, Mr. Simmons, what was the date on which that order to report for induction—what was the date for reporting that was on the order to report for induction?

A The date for reporting was January 19.

Q Did you report on that day?

A Yes, I did.

[Tr. 75]

Q Did you take the physical examination on that day?

A Partial physical, yes.

Q Were you inducted on that day?

A No, sir.

Q What happened?

A They had not finished my physical examination, and I was to come back on the 23rd of January.

Q Did you return on the 23rd of January?

A Yes, sir, I did.

Q At that time, had they completed the physical examination?

A They gave me a further examination at that time.

Q Were you told to return at a later date?

A Yes, sir, I was told to return on the 27th of January.

Q Did you return at that time?

A Yes, I did.

Q Had they completed the examination?

A As far as I know, they had completed the examination but they could not find my record.

Q Did they order you to report at a later date?

A The surgeon there at the record station told me to call back to see if my records had been returned from 2040 Taylor Street, I believe it was.

[Tr. 76]

Q Did you do that?

A Yes, I did.

Q Had they returned?

A No, they had not returned when I called.

Q Were you then given another date to return?

A I was given a further date to call back by phone.

Q Did you call back?

A Yes, sir, I did call back.

Q Had they been returned on that date?

A No.

Q Were you given any further instructions at the induction station?

A Well, during that time, I went down to local board No. 150 to see Mr. Reardon, to ask him if it was all right

if I went to work for a week, because I did not have any money, and I needed to get some money. He told me that it would be all right for me to go to work, but to report back there to him on February 9th and he would give me a ticket to the induction station.

Q Did you report on February 9th?

A Yes, I did.

Q Did you get your ticket to the induction station?

A Yes, he gave me a ticket.

Q On what date were you told to report?

[Tr. 77]

A To report on February 9th.

Q To the induction station?

A Yes.

Q Had your examination been completed?

A Yes, sir, it had been completed.

Q After the completion of your examination, were you given an opportunity to become a member of the Armed Forces?

A Yes.

Q Did you submit to induction?

A No.

Q After not submitting to induction, were you given a further opportunity?

A Well, yes.

Q Before being given the opportunity, did anyone read a law or regulation to you?

A Well, I would say it was more of a shout than reading.

Q Did anyone in any way state the law or regulation to you?

A Well, I don't know if he was a lieutenant or captain or what, but I was offered an opportunity, yes.

Q That was at the induction station?

A Yes, sir.

[Tr. 78]

Q In Chicago?

A In Chicago, yes.

Q Then you were given another opportunity to submit to induction?

A I was only given two opportunities, one in the induction ceremony room and the other in the presence of the officer.

Q And the second time, did you again refuse to submit?

A Yes, I did.

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GOVERNMENT'S EXHIBIT 1

(Selective Service File of Robert Simmons)

(Filed November 3, 1953)

[Immaterial portions of all printed, mimeographed, etc., form documents in this exhibit are omitted in printing. Handwritten or typewritten material is distinguished from printed-form wording by *italics*.]

SELECTIVE SERVICE SYSTEM

COVER SHEET

Name (Last) *Simmons* (First) *Robert* (Middle)
 Address *1448 Seymour* (City or town) *North Chicago*
 (County) *Lake* (State) *Illinois* Telephone Race *Negro*
 Selective Service Number *11 150 27 162*
 Date of Birth (Month) *Apr.* (Day) *8* (Year) *1927*

• • •

Local Board No. 150

Lake County

NOV 26 1948

220 No. Sheridan Road

Waukegan, Illinois

(Stamp of Local Board)

Date of registration *Sept. 10 1948*

Date of mailing Questionnaire *Dec. 6 1948*

Changes of Address:

1. (Number and street or R. F. D. number) *1400 16th St.*

(Date) *May 16, 1951* (City, town, or village) *North Chicago*

(Zone) (State) *Illinois*

• • •

Classification

Date	Class
<i>12-23-48</i>	<i>1A</i>
<i>JUN 4 1951</i>	<i>3A</i>
<i>OCT 22 1951</i>	<i>1A</i>
<i>NOV 26 1951</i>	<i>1A</i>
<i>FEB 5 1953</i>	<i>1A</i>

5601 ACC Audited C. C. C.

SSS Form No. 101

412

SELECTIVE SERVICE SYSTEM

REGISTRATION CARD

SSS Form No. 1

Selective Service Number *11 150 27 162 . . .*

1. Name (Last) *Simmons* (First) *Robert* (Middle)

2. Place of residence (City, town, village, or county) *North Chicago Ill.*

• • •

3. Mailing address *1448 Seymour*

4. Name and address of person who will always know your address (Name) *Mrs. Carrie Simmons* (Address) *Same*

5. Date of birth (Month) *Apr* (Day) *8* (Year) *1927*

6. Place of birth (City, town, village, or county) *North Chicago* (State or country)

7. Occupation *Chauffer*

8. Firm or individual by whom employed *Civil Service*

9. Nature of business, service rendered, or chief product *Naval Training Station*

10. Place of employment or business (Number and street or R. F. D. number) (Town) *Great Lakes* (County) (State) *Ill.*

12. Were you ever rejected for service in the armed forces? Yes *X* . . . When? *1943*

13. Marital status: Single *X* . . .

I affirm that I have verified the foregoing answers and that they are true:

Robert Simmons

(Signature of registrant)

Description of Registrant

16. Color of eyes *Brown* Color of hair *Black* Complexion *Black* Height (approx.) *6 ft. 1 in.* Weight (approx.) *200* Race *Negro*

. . .

(Date of registration) *Sept 10, 1948* (Signature of registrar) *Nellie C. Woodard*

Registrar for local board (Number) *150* (City or county) *North Chicago* (State) *Ill.*

. . .

[Local Board Stamp]

(Stamp of the Local Board of jurisdiction as determined by item 2, front of card)

— — —

GOVERNMENT'S EXHIBIT 1A

SELECTIVE SERVICE SYSTEM INDIVIDUAL APPEAL RECORD

DEC 19 1951

(Local Board Date Stamp)

Name of registrant (Last) *Simmons* (First) *Robert* (Middle)

Selective Service Number *11 150 27 162*

Classified by local board in Class *I-A* until . . .

Date classified *November 26, 1951*

Forwarded on appeal taken by *Registrant*

Date forwarded to Appeal Board *December 19, 1951.*

H. J. Reardon

Member or Clerk of Local Board.

Minutes of Action by Appeal Board

Appeal Board *Northern District Panel N—XI* for the State of *Appeal Board Illinois DEC 21 1951 523 Plymouth Court Chicago 5, Illinois . . .* Classified in Class *1A* until . . . by the following vote:

Yes 3 No 0 (Date of classification by Appeal Board)
DEC 17 1952

R. L. Warner

Member or Clerk of Appeal Board.

. . .

SSS Form No. 120

GOVERNMENT'S EXHIBIT 1B

DEC 9 1948

[Local Board Stamp]

SELECTIVE SERVICE SYSTEM
CLASSIFICATION QUESTIONNAIRE

Selective Service No. *11 150 27 162*

Date of mailing *Dec. 6, 1948*

Date of birth: (Month) *April* (Day) *8* (Year) *1927*

Name: (Last) *Simmons* (First) *Robert* (Middle)

Address: (Number and street or R. F. D. route) *1448 Seymour*

(City, town, or village) *North Chicago* (Zone) (County)

Lake (State) *Illinois*

Local Board No. *150*

Lake County

DEC 6 1948

220 No. Sheridan Road

Waukegan, Illinois

(Stamp of Local Board)

Notice to Registrant

• • •

This questionnaire must be returned on or before *Dec. 16, 1948*

H. J. Reardon

Clerk or Member of Local Board

• • •

SSS Form No. 100

[Page 2]

• • •

Statements of the Registrant
Series I—Identification

• • •

1. My name is (print) (Last) *Simmons* (First) *Robert* (Middle)

2. In addition to the name given above, I have also been known by the name or names of *Bobby*

3. My address now is *1448 Seymour Avenue . . .*
(City, town, or village) *North Chicago* (Zone) (County)
Lake (State) *Illinois*

4. My telephone number now is (Town) *North Chicago*
(Exchange) *MAJ* (Number) *5116m . . .*

5. My Social Security number is (If none, write "None") *747-16-3539*

Series II—Present Members of Armed Forces

• • •

[Page 3]

• • •

Series III.—Prior Military Service

• • •

Series IV.—Officials Deferred by Law

• • •

Series V.—Sole Surviving Son

• • •

Series VI.—Minister, or Student preparing for the Ministry

• • •

1. (a) I (am, am not) *am not* a minister of religion
(b) I (do, do not) *do not* regularly serve as a minister.

• • •

[Page 4]

Series VII.—Family Status and Dependents

• • •

Series VIII.—Present Occupation

1. Every registrant must check each of the following boxes appropriate to his case and follow the instructions indicated.

• • •

- (b) I am now working in a nonagricultural occupation
X . . .

• • •

2. The job I am now working at is . . . *Chauffeur 3/c*
3. I do the following kind of work in my present job
(Be specific. Give a brief statement of your duties.): *I drive
buses, trucks, and passenger cars*

4. In my present job, I am . . . (a) a regular or permanent employee, work for . . . other compensation X; I have worked 4 years in my present trade, and I (do, do not) *do* expect to continue indefinitely in it.

• • •

5. My employer is *United States Civil Service Commission, Public Works . . . Great Lakes Naval Training Center . . . Great Lakes, Ill.* whose business is . . .

6. (a) I was employed by present employer on (Date) *February 9, 1948*

- (b) I entered job described in Statements 2 and 3, this series, on (Date) *February 9th 1948*

[Page 5]

- (c) I am paid at the rate of \$1.18 per hour X . . .

- (d) I work an average of 40 hours per week.

7. Other business or work in which I am now engaged is *None . . .*

8. Prior work experience *4 years chauffeur experience*

. . .

Series IX.—Agricultural Occupation

. . .

[Page 6]

Series X.—Education

1. I have completed (Number) *8* years of elementary school, (Number) *0* years of junior high school, and (Number) *2 1/2* year of high school.

2. I (was, was not) *was not* graduated from high school.

. . .

Series XI.—Students

. . .

Series XII.—Citizenship

. . .

Series XIII.—Court Record

. . .

[Page 7]

Series XIV.—Conscientious Objection to War

. . .

By reason of religious training and belief I am conscientiously opposed to participation in war in any form and for this reason hereby request that the local board furnish me a Special Form for Conscientious Objector (SSS Form No. 150) which I am to complete and return to the local board for its consideration.

(Signature) [left blank]

Series XV.—Physical Condition

. . .

Registrant's Statement Regarding Classification

. . .

In view of the facts set forth in this questionnaire it is my opinion that my classification should be Class 1A

• • •

Registrant's Certificate

• • •

I, *Robert Simmons*, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing (are, are not) *are* in my own handwriting.

Robert Simmons

(Signature or mark of registrant)

• • •

[Page 8]

• • •

Dates	Minutes of Actions by Local Board and Appeal Board	Vote	
		Yes	No
12-23-48	1-A C. A.—ESA . . . SSS 110 to Reg. 3	3	0
5-8-51	SSS 219 Mailed		
JUN 4 1951	Class 3A . . .		
JUN 6 1951	SSS Form No. 110 Mailed		
OCT 22 1951	1A . . .		
OCT 23 1951	SSS Form No. 110 Mailed		
Oct 30 1951	" " " 223 "		
NOV 26 1951	Form No. 62 Mailed		
NOV 26 1951	Class 1A . . .		
NOV 27 1951	SSS Form No. 110 Mailed		
Apr. 18, 1952	The Appeal Board reviewed the file and determined that the registrant should not be classified in either Class I-A-O or Class I-O under the circumstances set forth in subparagraphs (2) or (4) of paragraph (a) of this		

section, (1626.25 of the Selective Service Regulations).

Dec 22 1952 SSS Form 110 mailed.

JAN 6 1953 SSS Form 252 mailed

GOVERNMENT'S EXHIBIT 1C

OCT 30 1951

[Local Board Stamp]

SELECTIVE SERVICE SYSTEM

SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

Selective Service No. *11 150 27 162*

Name (Last) *Simmons*, (First) *Robert* (Middle)

Address (Number and street or R. F. D. route) *1400 16th St.*
(City, town, or village) *North Chicago*, (County) (State)
Ill.

OCT 25 1951

[Local Board Stamp]

This form must be returned on or before (Five days after date of mailing or issue) *Oct. 30, 1951*

* * *

Series I.—Claim for Exemption

* * *

(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training or service in the armed forces. I, therefore, claim exemption from combatant training and service and, if my claim is sustained, I understand that I will, because of my conscientious objection to noncombatant service in the armed forces, be deferred as provided in Section 6(j) of the Selective Service Act of 1948.

(Signature of registrant) *Robert Simmons*

Series II.—Religious Training and Beliefs

1. Do you believe in a Supreme Being? Yes X . . .
2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a supreme being involves duties which to you are superior to those arising from any human relation.

Romans 13: 1—States that Jehovah God and Christ Jesus are the higher powers and that I recognize them as the supreme powers. Peter at Acts 5: 29 admonishing all foot-step followers of Christ Jesus that "we must obey God rather than men."

Also Paul at 2 Cor. 4: 4 states Satan the Devil is the God of this system of things. Showing that we show obey the Creator rather than the Creation of God. Jehovah God in one of his Ten Commandments at Ex. 20: 13. "Thou shall not kill."

[Page 2]

3. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

In 1949 mid-November I started a Bible book study and became interested in Bible truths. As I progressed in this Bible study I wanted more & more to become a minister of the truth. My first contact was with Clarence Howze. I am now receiving my training from the Watchtower Bible & Tract Society.

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

Clarence Howze, 968 Indiana St. Waukegan, Illinois

5. Under what circumstances, if any, do you believe in the use of force?

None whatsoever. Unless it be under the supervision of Jehovah God.

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

In my course of conduct being a minister I regularly

spend an average of 45 hours a month in the service of Jehovah God.

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where?

From House to House, and on the street in Waukegan, Illinois

Series III.—General Background

• • •

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (church, military, commercial, etc.).

Name of School	Type of School	Location of School	Dates Attended From-To-
<i>Commonwealth</i>	<i>Grammer</i>	<i>15th & Common- wealth No. Chg. Ill.</i>	<i>1933 1941</i>
<i>Waukegan township High</i>	<i>Waukegen, Illinois</i>		<i>1941 1943</i>

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged.

Type of Work	Name of Employer	Address of Employer	Period Worked From-To-
<i>Shine Shoes</i>	<i>Central Shoe repair</i>	<i>3 So. Genesec</i>	<i>1943 1944</i>
<i>Shine Shoes</i>	<i>Ships Service</i>	<i>Great Lakes, Illinois</i>	<i>1944 1944</i>
<i>Truck Driver</i>	<i>Porett Bros.</i>	<i>112 Madison St.</i>	<i>1944 1945</i>
<i>Chauffeur</i>	<i>Civil Service</i>	<i>Fort Sheridan, Ill.</i>	<i>1945 1945</i>
<i>Chauffeur</i>	<i>Civil Service</i>	<i>Great Lakes Ill.</i>	<i>1945 1951</i>

[Page 3]

3. Give all addresses and dates of residence where you have formerly lived.

Name of City, Town, or Village	State or Foreign Country	Street Address or R. F. D.	Dates of Residence Route From-To
North Chicago, Ill.	Illinois	1448 Seymour Ave.	1927 1948
North Chicago	Illinois	1400 16th Street	1948 1951

4. Give the name and address of your parents and indicate whether they are living or not.

Carrie B. Simmons 1448 Seymour No. Chgo. Ill. Deceased

James H. Simmons 1448 Seymour No. Chgo. Ill. Living

5. (a) State the religious denomination or sect of your father *none that I know of—*

(b) State the religious denomination or sect of your mother *Baptist*

Series IV.—Participation in Organizations

• • •

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

No.

2. Are you a member of a religious sect or organization? (Yes or no) *Yes* If your answer to question 2 is "yes," answer questions (a) through (e).

(a) State the name of the sect, and the name and location of its governing body or head if known to you.

Watch Tower Bible & Tract Society 117 Adams St. Brooklyn N. Y.

(b) When, where, and how did you become a member of said sect or organization? *Started attending meetings mid-November 1949 Kingdom Hall at 814 Belvidere St. Waukegan.*

(c) State the name and location of the church, congregation, or meeting where you customarily attend.

Kingdom Hall of Jehovah Witnesses 616 McAllister St.

Waukegan Ill.

(d) Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting.

H. McClure Highland Park, Illinois

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

We are opposed to combat or noncombat service.

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than military, political, or labor organizations.

None.

[Page 4]

Series V.—References

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your professed convictions against participation in war.

Name	Full Address	Occupation or Position	Relationship
<i>Mr. Clarence Howze</i>	<i>68 Ind. Ave.</i>	<i>Janitor</i>	<i>None</i>
<i>Charles R. Gardner</i>	<i>2039 Wright St.</i>	<i>Waukegan</i>	<i>None</i>
<i>Everett Harris</i>	<i>Wadsworth Road</i>	<i>Waukegan</i>	<i>None</i>
<i>H. McClure</i>		<i>Highland Pk.</i>	<i>None</i>

Registrant's Certificate

• • •

I, *Robert Simmons*, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing (are, are not) *are* in my own hand-

writing.

Robert Simmons
(Signature or mark of registrant)

• • •

GOVERNMENT'S EXHIBIT 1D

**CHICAGO ARMED FORCES EXAMINING
INDUCTION & RECRUITING MAIN STATION**

615 West Van Buren Street
Chicago 7, Illinois
10 February 1953

Local Board No. 150
Selective Service System
220 North Sheridan Road
Waukegan, Illinois

Re: Simmons, Robert
SS# 11 150 27 162

Gentlemen:

The above named registrant reported to this station on 9 February 1953, for induction into the U. S. Armed Forces. Upon arrival at this station Mr. Simmons refused to be inducted.

In compliance with Paragraph 27b, Special Regulations 615-180-1, Department of the Army, dated 5 November 1951 letter as required explaining the action of subject registrant have been forwarded to the U. S. District Attorney, and the State Director of Selective Service.

Transmitted herewith are registrants DD Form 47 and other allied papers. Copy of above mentioned letter is also forwarded for your files.

Very truly yours,
[Signature]
Ralph D. Buswell
1st Lt. Armor
OIC, Induction Section

7 Incls.

1. Ltr U. S. District Attorney
dtd 19 Feb 53
 2. DD Form 47 (in quad)
dtd 19 Jan 53
 3. Std. Form 88 (in quad)
dtd 19 Jan 53
 4. Std. Form 88 (in quad)
dtd 14 Nov 51
 5. Std. Form 89
dtd 14 Nov 51
 6. DD Form 47
dtd 16 May 51
 7. DD Form 47
dtd 14 Nov 51
- FEB 13 1953
[Local Board Stamp]
-

GOVERNMENT'S EXHIBIT 1E

DEPARTMENT OF JUSTICE
Washington, D. C.
December 3, 1952

DEC 8 1952

[Appeal Board Stamp]

DEC 22 1952

[Local Board Stamp]

Chairman, Appeal Board, Northern
District of Illinois
Selective Service System
523 Plymouth Court
Chicago, Illinois

Re: Robert Simmons
S. S. No. 11-150-27-162

Dear Sir:

As required by section 6(j) of the Universal Military Training and Service Act, an inquiry was made in the above-mentioned case and an opportunity to be heard on his

claim for exemption as a conscientious objector was given to the registrant by Honorable Roy O. West, Hearing Officer for the Northern District of Illinois.

Registrant is twenty-five years of age, married, born in Illinois and has completed approximately two years of high school. At the present time he is employed as a chauffeur. He was first contacted by a member of the Jehovah's Witnesses Sect in November 1949, although the exact date of membership is not reflected.

The registrant believes in a Supreme Being and describes the nature of his belief by citing various parts of the Scriptures, in part, as follows:

"Romans 13:1— . . . that Jehovah God and Christ Jesus are the higher powers, and I recognize them as the supreme powers. Peter at Acts 5:29 admonishing all footstep followers of Christ Jesus that 'We must obey God rather than men.' Also Paul at 2 Cor. 4:4 . . . Satan the Devil is the God of this system of things. Showing that we show (sic) obey the Creator rather than the Creation of God. Jehovah God in one of his Ten Commandments at Ex. 20:13 'Thou shall not kill.'"

Registrant relates that in November 1949, at the suggestion of one Clarence Howze, he started a Bible book study and as he progressed wanted more and more to become a minister of truth. At the present time he is receiving training from the Watchtower Bible and Tract Society. As to the question regarding use of force he states "None whatsoever. Unless it be under the supervision of Jehovah God." He claims to engage in the work of his religion by preaching from house to house and on the streets.

At his present place of employment he has been seen reading the Bible during lunch hour and discussing same with a few co-workers. References, all of whom are members of the same sect, believe registrant is sincere, as do his neighbors. A confidential informant, of known reliability, reports that during the last seven or eight months regis-

trant was actively engaged in distributing pamphlets; that prior to that time registrant was personally known to him as a rather heavy drinker and crap shooter in and around local taverns and pool halls. This informant believes registrant is now sincere. Registrant states he has changed his ways and now prays many times during the day. His wife also states he has changed. It is to be noted that registrant is reported to have had a very poor home life.

Police records reflect that registrant was arrested May 29, 1950 on a complaint by his wife that he pulled her out of a car and hit her in the face—fined \$13.60; on June 12, 1950 police were called to settle a "hot argument" and on January 6, 1952, wife claimed registrant was abusive. Police settled last two matters so no charges were filed.

The file also reflects that registrant was mailed his questionnaire on December 6, 1948 and did not sign that part (series XIV) reserved for a conscientious objection. He was classified I-A on December 23, 1948 and married his present wife on March 5, 1949.

The Hearing Officer reports registrant impressed him as sincere but notes that his religious activities are coincident with pressing draft activities by officials and, therefore, recommends a I-A classification.

From the available information it appears that registrant had little, if any, religious training prior to November 1949 and it was not until after his 3-A classification was changed to I-A that he evidenced any conscientious objection. From the time he first attended a Bible study class until approximately October 1951, registrant had a little less than two years of Jehovah's Witness religious training. In addition to the fact that his religious activities coincide with pressing induction possibilities, registrant's absorption and sincerity as to his newly found religion is rendered more questionable by his abusiveness and the exercise of physical violence towards his wife. In this connection police records reflect a complaint by his wife as late as January 6, 1952.

After consideration of the entire file and record, the

Department of Justice finds that the registrant's objections to combatant and noncombatant service are not sustained. It is, therefore, recommended to your Board that registrant's claim for exemption from both combatant and non-combatant training and service be not sustained.

The Selective Service Cover Sheet in the above case is returned herewith.

Sincerely,
[Signature]

T. Oscar Smith
Special Assistant to the Attorney General

DEC 22 1952
[Local Board Stamp]

GOVERNMENT'S EXHIBIT 1F

10 February 1953

U. S. District Attorney
219 South Clark Street
Chicago, Illinois

Dear Sir:

In compliance with Paragraph 27b, Special Regulations 615-180-1, Department of the Army, dated 5 November 1951, the name and circumstances surrounding the refusal of ROBERT SIMMONS, 1400-16th Street, North Chicago, Illinois, Selective Service Number 11 150 27 162, who refused to submit to induction into the Armed Forces of the United States is hereby submitted:

ROBERT SIMMONS, was ordered to report for induction into the Armed Forces of the United States on Monday 9 February 1953 by Selective Service Local Board No. 150, whose address is 220 North Sheridan Road, Waukegan, Illinois. Mr. Simmons stated that because of personal religious beliefs he could not submit to induction into the Armed Forces of the United States. Mr. Simmons was

asked to make a signed statement in his own hand writing confirming his refusal to submit to induction which he did of his own free will. It was explained to the registrant that his refusal to submit to induction would constitute a felony under the provisions of Selective Service Regulations, and he was further informed that a conviction of such a nature would subject him to punishment of either five (5) years of imprisonment and/or a fine of not more than \$10,000.00 or both. 1st Lt. Ralph D. Buswell and WOJG Walter Kempa were witnesses to the registrants refusal to submit to induction.

This matter is being referred to your office for the necessary action.

Sincerely yours,
Earl Eubanks
Major USAF
Commanding

FEB 13 1953
[Local Board Stamp]

GOVERNMENT'S EXHIBIT 1G

SELECTIVE SERVICE SYSTEM ORDER TO REPORT FOR INDUCTION

JAN 6 1953

(Local Board Date Stamp with Code)

January 6, 1953

(Date of mailing)

The President of the United States,

To (First name) *Robert* (Middle name) (Last name)
Simmons (Selective Service Number) *11 150 27 162* (Street
and number) *1400—16th St.* (City) *North Chicago* (State)
Illinois

Greeting:

Having submitted yourself to a Local Board composed

of your neighbors for the purpose of determining your availability for service in the armed forces of the United States, you are hereby ordered to report to the Local Board named above at (Place of reporting) *220 N. Sheridan Road, Waukegan, Illinois* at (Hour of reporting) *3:00 P m.*, on the *16th* day of *January, 1953*, for forwarding to an induction station. *For instructions only. You will not leave for Chicago until the following Monday morning.*

• • •

H. J. Reardon

Member of Local Board

SSS Form No. 252

• • •

GOVERNMENT'S EXHIBIT 11

SELECTIVE SERVICE SYSTEM DELINQUENT REGISTRANT REPORT

FEB 13 1953

(Local Board Stamp)

(Date) *February 13, 1953*

TO: Hon. *Otto. A Kerner, United States Attorney.* (Address) *U. S. Court House, Chicago, Illinois*
House, Chicago, Illinois

1. Identification of Delinquent:

Full name of delinquent: (Last) *Simmons* (First) *Robert* (Middle) . . . Last known address: (Number and street or R. F. D. route) *1400 16th Street*, (City, town, or village) *North Chicago* (Zone) (County) *Lake* (State) *Illinois*

Selective Service No.: *11 150 27 162*

Social Security No.: *347 16 3539*

Selective Service classification: *1-A*

Color of eyes: *Brown* Color of hair: *Black* Complexion:

Dark Height: *6'1"* Weight: *200* Race: *Negro*

Other obvious physical characteristics: *None*

Date of birth: (Month) *April* (Day) *8* (Year) *1927*

Place of birth: (City, town, county) *North Chicago* (State or country) *Illinois* Prior military service: *None . . .*

2. Offenses:

This delinquent failed to report for induction into the Armed Forces pursuant to . . .

In addition to failing to report for induction into the Armed Forces this delinquent has also failed to perform the following duties at the times indicated:

Duties	Dates
<i>Registrant refused to be inducted</i>	<i>9 February 1953</i>
SSS Form No. 301	

H. J. Reardon
(clerk of local board)

• • •

• • •

GOVERNMENT'S EXHIBIT 1Q

LAKE COUNTY TUBERCULOSIS SANATORIUM
WAUKEGAN ILLINOIS

• • •

RECEIVED
FEB 5 - 1953
STATE DIRECTOR
S. S. S. ILLINOIS
February third
1953

To Whom It May Concern:

Mrs. Delpha Simmons, wife of Robert Simmons, draft board registrant, is confined to the Lake County Tuberculosis Sanatorium for treatment of Advanced Pulmonary Tuberculosis.

Robert Simmons is the sole support of this patient and

she will be dependent upon him for care when she is able to leave the hospital.

Very truly yours,
[Signature]
Charles K. Petter, M. D.,

CKP:hf

Subscribed and sworn to before me this 3rd day of February 1953.

Lucille M. Tomasik
Notary Public

FEB 13 1953
[Local Board Stamp]

GOVERNMENT'S EXHIBIT 1R

Re: Simmons, Robert
SS 11-150-27-162

SELECTIVE SERVICE SYSTEM
STATE HEADQUARTERS
523 Plymouth Court
Chicago 5, Ill.

CJM:ks

COPY

11 February 1953

Mr. Robert Simmons
1400-16th street
North Chicago, Illinois

Dear Mr. Simmons:

This will acknowledge receipt of the carbon copy of your letter of 3 February.

We note from your letter you state you were ordered to report for induction 19 January 1953. The letter was not received in this office until 5 February.

We, therefore, cannot give any further consideration to the matter except to forward the affidavit relative to your

Government's Exhibit 1R

wife's condition to the local board of jurisdiction.

Yours very truly,
For the State Director
[Signature]
C. J. Magnesen
Lt. Col. Inf.
Classification Officer

cc: Local Board No. 150

FEB 13 1953
[Local Board Stamp]

GOVERNMENT'S EXHIBIT 1S

CHICAGO RECRUITING MAIN STATION
ILLINOIS USA & USAF RECRUITING SERVICE GROUP
615 West Van Buren Street
Chicago 7, Illinois

M/Sgt Irsyk/et
Date 29 January 1953

Local Board No. 150
Selective Service System
220 North Sheridan Rd.
Waukegan, Illinois

Re: Simmons, Robert
SS# 11 150 27 162
Exam 19 Jan. 1953 (Induc)

Gentlemen:

It is requested that the action indicated below in regard to subject registrant be taken at the earliest practicable date.

X Return Registrant without issuing new Form 261 to Operations Office, 4th Floor, with copy of this letter, for:

• • •

X Other (Explain) Please have registrant report directly to M/Sgt Irzyk—4th Floor-Induction Section for

completion of Induction Processing. DD Form 47's have been retained at this Station.

Sincerely yours,

[Signature]

Raymond L. Wilkinson

Captain, Infantry

Commanding

CRMS Form 109

(30 April 52)

GOVERNMENT'S EXHIBIT 1T

CHICAGO RECRUITING MAIN STATION

ILLINOIS USA & USAF RECRUITING SERVICE GROUP

615 West Van Buren Street

Chicago 7, Illinois

M/SGT. IRZYK/jt

Date 29 January 1953

Local Board No. 150

Selective Service System

220 N Sheridan Road

Waukegan, Illinois

Re: Simmons, Robert

SS# 11 150 27 162

Exam 19 Jan '53 (Induc)

Gentlemen:

It is requested that the action indicated below in regard to subject registrant be taken at the earliest practicable date.

. . .

XX Schedule Registrant for re-examination on new SSS Form 261.

XX Other (Explain) Registrant Previously Listed as "Holdover" on Date Scheduled for Induction. No Records

Government's Exhibit 1T

Can Be Located in This Station.

Sincerely yours,
[Signature]
Raymond L. Wilkinson
Captain, Infantry
Commanding

CRMS Form 109
(30 April 52)

GOVERNMENT'S EXHIBIT 1U

• • •

[Local Board Stamp]
JAN 22 1953

CORRESPONDENCE POSTAL CARD

Refer to your SS number in all communications 11 150 27 162

Please report to your Draft Board at once. Office hours are 8:30 A.M. to 5: P.M. Monday thru Friday.

H. J. Reardon

M. K.

(Signature of Local Board Member or Clerk)

SSS Form No. 390

GOVERNMENT'S EXHIBIT 1V

MEMORANDUM OF INFORMATION

To Be Filed in Cover Sheet of (Registrant's Name) *Robert Simmons*

(Sel. Serv. No.) *11-150-27-162*

Check source of Information: . . . (X) Over the Counter . . .

In the space below, write a summary of the information received: (If more space is needed, use the reverse side or attach extra sheets) *Registrant is H/O. Reported to Ind. Sta. 1-22-52 & reporting again 127-53.*

Date: *1-23-53* Information Received From: *Registrant*

• • •

GOVERNMENT'S EXHIBIT 1W

150-27-162

1A

LAKE COUNTY TUBERCULOSIS SANATORIUM
WAUKEGAN ILLINOIS

• • •

JAN 20 1953
[Local Board Stamp]
20 January 1953

To Whom It May Concern:

Mrs. Delpha Simmons, wife of Robert Simmons, draft board registrant, is confined to the Lake County Tuberculosis Sanatorium for treatment of Advanced Pulmonary Tuberculosis.

Robert Simmons is the sole support of this patient and she will be dependent upon him for care when she is able to leave the hospital.

Very truly yours,

[Signature]

Charles K. Petter, M.D.,

• • •

[Sworn Before Notary Public]

GOVERNMENT'S EXHIBIT 1X

RECORD OF INDUCTION

• • •

[Local Board Stamp]

JAN 19 1953

• • •

DD Form 47

• • •

Section VI—Induction Board Classification
(To be filled out at induction station)

23. I certify that the qualifications of the above named registrant have been considered in accordance with the current regulations governing the acceptance of Selective Service registrants and he was this date:

a. X Found acceptable for induction into the armed services

• • •

Date 9 Feb 53

Place Chicago, Illinois

• • •

RE-EXAMINATION

REPORT OF MEDICAL EXAMINATION

Standard Form 88

• • •

6. Date of examination 19 Jan 53

• • •

Remarks and additional detail defects and diseases
CLASS ACCEPTED

• • •

GOVERNMENT'S EXHIBIT 1Y

Concerning Reclassification

Robert Simmons SS# 11-150-27-162

As a ordained Minister of Religion

1A

Sirs:

Receive your letter stating that I am still in the class (1-A). Still being *unsatisfy* with it, would like to have my records stating that I am a minister of the true religion, and also the letters that were sent to you be brought up to the Board of Appeals for further consideration.

Gentlemen, much is said in the briefs both complimentary and derogatory to Jehovah's Witnesses. Whatever a draft board or a court, or any-body else for that matter, may think of them is of little consequence. The fact is, they

have been recognized by the Selective Service System as a Religious Organization, and are entitled to the same treatment as the members of any other religious organization. The Selective Service System has even more broadly defined the term "regular minister of religion" under the heading, "Special Problems of Classification". (Selective Service in Wartime). Second Report of the Director of Selective Service, 1941-1942, Pages 239-241, it is stated: "The ordinary concept of 'Preaching and teaching' is that it must be oral and from the Pulpit or Platform. Such is not the test. Preaching and teaching have neither locational nor vocal limitations. The method of transmission of knowledge does not determine its value or effect its purpose or goal. One may preach or teach from the pulpit, from the curbstone, in the fields, or at the residential fronts. He may shout his message from housetops 'or write it upon tablets of stone'. He may give his 'sermon on the mount', heal the eyes of the blind, or write upon the sands while a Magdalene kneels, wash disciples feet or die upon the cross. He may walk the streets in daily converse with those about him telling them of those ideals that are the foundation of his Religious conviction, or he may transmit his message on the written or printed page, but he is none the less the minister of religion if such method has been adopted by him as the effective means of inculcating in the minds and hearts of men the principles of religion. To be a 'regular minister' of religion, the translation of religious principles into the lives of his followers must be the dominating factor in his own life, and must have that continuity of purpose and action that renders other purposes and actions relatively unimportant."

A minister for eternal service
in the eyes of Jehovah God and
his son Christ Jesus.

Robert Simmons

[Local Board Stamp]

DEC 18 1951

GOVERNMENT'S EXHIBIT 1Z

DEC 11 1951

[Local Board Stamp]

December 11, 1951

Robert Simmons

1400 - 16th St.

North Chicago, Illinois

Dear Robert:

After considering the evidence submitted at the time of your Hearing, December 10, 1951, the local Board has determined the same insufficient for any reopening of your classification. Should you wish the case reviewed by the appeal board, you will please notify us within 10 days of the mailing of this letter.

Very Truly Yours

For the Local Board

[Signature]

H. J. Reardon, Clerk

HJR:bc

GOVERNMENT'S EXHIBIT 1AA

Concerning Reclassification

Of Robert Simmons

SS# 11-150-27-162

Sirs:

Both Minister and ambassadors serve their sovereign in an alien land. Jehovah's Witnesses of today are ministers and ambassadors of the Kingdom of Almighty God, his Theocratic Government under Christ Jesus. The time, energy and life of the Witnesses of Jehovah is dedicated exclusively to the service of Almighty God. As a minister of Jehovah God, I have made a covenant or contract with Almighty God to perform faithfully my God-given preaching activity as long as I live. Turning aside from that assigned duty, to engage in serving another master, to perform other

work assigned by the Civil State, or refraining from preaching because of compliance with arbitrary commands to stop, God has declared that Covenant-breakers are worthy of death. (Romans 1:31, 32.). I am in the army of Christ Jesus, serving as a soldier of Jehovah's appointed Commander, Christ Jesus. (2 Timothy 2:34.). The war weapons of the soldier of Christ Jesus are not Carnal, and is not authorized by his Commander to engage in Carnal Warfare of this World. Our weapons are the sword of truth or the Holy Bible, God's written word.

Today one of the leading members of the United Nations, namely the United States of America, has declared Jehovah's Witnesses to be a recognized religious organization, and that its ministers are exempt from training and service in the Armed Forces.

Jehovah's Witnesses keep their Neutrality and their covenant obligations as ambassadors for God's Kingdom, and they declare their reason for refusing to break their allegiance to Almighty God Jehovah. Gods word the Bible at (2 Corinthians 4:4.) tells us that Satan is the God of this world or system of things. James 4:4, tells us that a friend of the world is an enemy of God. We are told at (Zephaniah 2:3.) "Seek ye the Lord, All ye meek of the earth, which have wrought his *judgement*: Seek righteousness, seek meekness: it may be ye shall be hid in the day of the Lord's anger." While the world struggles in agony because of its woes, and while the message of God's Kingdom is a sore plague to Satans organization, Jehovah's Witnesses are glad and rejoice despite suffering for these see their deliverances near. Jesus said at (Luke 21:18.) "And when these things begin to come to pass, Then look up, And lift up your heads for your redemption draweth nigh." This is sure sign of the finish to the old system of things that cries peace, but is stricken with wars, Professes Godliness, yet seeks with *imorality* boasts of wakefulness while it is sound asleep. God's Kingdom by Christ Jesus is destined to end Man's every *Affliction* and Woes. Extension of its power to the earth inside this generation will be the

greatest blessing in Man's history. Gods Kingdom is the only hope for Mankind.

Yours Truly
Robert Simmons

GOVERNMENT'S EXHIBIT 1BB

CERTIFICATE OF ACCEPTABILITY

Last Name - First Name - Middle Name		Present Home
		Address
<i>Simmons</i>	<i>Robert</i>	<i>1400 16th St.</i>
		<i>N Chgo, Ill.</i>

Selective Service Number *11 150 27 162*

Local Board Address *220 North Sheridan Rd Waukegan Ill.*

I certify that the qualifications of the above named registrant have been considered in accordance with the current regulations governing acceptance of Selective Service registrants and he was this date:

X Found acceptable for induction into the armed services

• • •

NOV 26 1951

[Local Board Stamp]

Date	Place	Typed or stamped name
<i>14 Nov 1951</i>	<i>Chicago, Ill</i>	and grade of joint examining and inductions station commander

Robert Baum, Maj 5102 ASU

Signature *Baum*

GOVERNMENT'S EXHIBIT 1CC

12-10-51

Registrant reported as scheduled at which time he offered evidence substantially the same as in Form 150 in file.

He made the statement he was seeking classification as a minister and *not* as a conscientious objector. The local board determined the evidence insufficient for any reopening of the 1A classification. The registrant was advised of his Appeal rights.

GOVERNMENT'S EXHIBIT 1DD

RECORD OF INDUCTION

• • •

23. I certify that the qualifications of the above named registrant have been considered in accordance with the current regulations governing the acceptance of Selective Service registrants and he was this date

a. X Found acceptable for induction into the armed services

• • •

Date *14 November 52* Place *Chicago Illinois*

• • •

GOVERNMENT'S EXHIBIT 1EE

May 31, 1951

Robert Simmons, 11-150-27-162
1400 - 16th Street,
North Chicago, Illinois
Dear Sir:

Your order to report for pre-induction physical examination on June 8th is hereby cancelled. When the Local Board has reviewed your file, you will be notified of your new classification.

Very truly yours,
For the Local Board
H. J. Reardon, Clerk

HJR/mi

GOVERNMENT'S EXHIBIT 1FF**SELECTIVE SERVICE SYSTEM****ORDER TO REPORT FOR ARMED FORCES PHYSICAL EXAMINATION****OCT 30 1951**

(Local Board Stamp)

(Date of mailing) *October 30, 1951*To (First name) *Robert* (Middle name) (Last name) *Simmons*(Selective Service Number) *11 150 27 162*

You are hereby directed to report for armed forces physical examination at (Place of reporting) *220 N Sheridan Road, Waukegan, Illinois* at (Hour of reporting) *3:30P m.*, on the (Day) *13th* of (Month) *November, 1951.* *For instructions only. You will not leave for Chicago until the following morning.*

H. J. Reardon

(Member or clerk of Local Board)

• • •

SSS Form No. 223

GOVERNMENT'S EXHIBIT 1GG**SELECTIVE SERVICE SYSTEM****ORDER TO REPORT FOR ARMED FORCES PHYSICAL EXAMINATION****MAY 25 1951**

(Local Board Stamp)

(Date of mailing) *May 25, 1951**Cancelled 5/31/51 [Pencil note]*To (First name) *Robert* (Middle name) (Last name) *Simmons*(Selective Service Number) *11 150 27 162*

You are hereby directed to report for armed forces physical examination at (Place of reporting) *220 N. Sheridan Road, Waukegan, Illinois* at (Hour of reporting)

8:00 A m., on the (Day) 8th of (Month) June, 1951.

H. J. Reardon
(Member or clerk of Local Board)
• • •

SSS Form No. 223

GOVERNMENT'S EXHIBIT

(attached to Government's Exhibit 1C)

Robert Simmons
Registrant #11-150-27-162

To men of Selective Serve System!
Gentleman,

This is a written notice of appeal to the local board for a personal appearance regarding Registration—classification.

Evidently there is an over sight which must be corrected. In my request for personal appearance I would like to give further proof of my ministry.

Yours
Robert Simmons

DEC 3 1951

[Local Board Stamp]

Mailed SS 390 - Dec. 3, 1951. to Registrant to Report for Hearing 12-10, 1951 at 8:00 P.M. M Koehler

GOVERNMENT'S EXHIBIT 2

REPORT OF MEDICAL EXAMINATION

Standard Form 88

• • •

CLASS ACCEPTED

• • •

FEB 9 1953

Inspection performed in lieu of new physical examina-

tion, per auth. D. A. Ltr AGSP-E 341. 8 23 June 1952.

Defects Discovered upon Inspection: "None"

• • •

77. Examinee (Check) X is qualified for Military Service

• • •

10 February 1953

U. S. District Attorney
219 South Clark Street
Chicago, Illinois

Dear Sir:

In compliance with Paragraph 27b, Special Regulations 615-180-1, Department of the Army, dated 5 November 1951, the name and circumstances surrounding the refusal of ROBERT SIMMONS, 1400-16th Street, North Chicago, Illinois, Selective Service Number 11 150 27 162, who refused to submit to induction into the Armed Forces of the United States is hereby submitted:

ROBERT SIMMONS, was ordered to report for induction into the Armed Forces of the United States on Monday 9 February 1953 by Selective Service Local Board No. 150, whose address is 220 North Sheridan Road, Waukegan, Illinois. Mr. Simmons stated that because of personal religious beliefs he could not submit to induction into the Armed Forces of the United States. Mr. Simmons was asked to make a signed statement in his own hand writing confirming his refusal to submit to induction which he did of his own free will. It was explained to the registrant that his refusal to submit to induction would constitute a felony under the provisions of Selective Service Regulations, and he was further informed that a conviction of such a nature would subject him to punishment of either five (5) years of imprisonment and/or a fine of not more than \$10,000.00 or both. 1st Lt. Ralph D. Buswell and WOJG Walter Kem-

pa were witnesses to the registrants refusal to submit to induction.

This matter is being referred to your office for the necessary action.

Sincerely yours,

EARL EUBANKS
Major USAF
Commanding

CHICAGO RECRUITING MAIN STATION
ILLINOIS USA & USAF RECRUITING SERVICE GROUP
615 West Van Buren Street
Chicago 7, Illinois

2/9/53

I refuse to be inducted into the Armed Services of the United States

/s/ Robert Simmons
/t/ Robert Simmons

Witnessed by:

Walter Kempa
/s/ WOJG USA

/t/ Walter Kempa
WOJG USA

/s/ Ralph D. Buswell
1st Lt. Armor

/t/ Ralph D. Buswell
1st Lt. Armor

The above statement in man's own handwriting

• • •

• • •

NOTICE OF APPEAL

(Filed September 28, 1953)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

(Caption—53 CR 169)

* * *

I

Name and address of appellant is Robert Simmons, 1400 16th Street, North Chicago, Illinois.

II

Name and address of appellant's counsel is Karl M. Milgrom, 19 South LaSalle Street, Chicago, Illinois.

III

Offense: A violation of the Universal Military Training and Service Act, by failure to submit to induction.

IV

The defendant was convicted upon a plea of not guilty of the above-described offense by a finding of guilty by the Court, and was sentenced and committed on September 18, 1953 to the custody of the Attorney General of the United States for a period of two years.

V

The above-named appellant hereby appeals to the United States Court of Appeals for the Seventh Circuit from the above-stated judgment.

Dated September 28, 1953.

Karl M. Milgrom
Counsel for Appellant

* * *

STATEMENT OF POINTS

(Filed October 23, 1953)

(Caption—53 CR 169)

• • •

Now comes the defendant-appellant in the above cause and states the points on which he intends to rely on the appeal.

One.

The trial court committed error in granting the motion to quash the subpoena duces tecum issued by the Clerk of that court at the request of the defendant, requiring the production at the trial of a certain Federal Bureau of Investigation investigative report submitted to Roy West, as Hearing Officer of the United States Department of Justice, in connection with the hearing conducted by said Hearing Officer relating to the conscientious objector Selective Service status of the defendant.

Two.

The trial court erred in overruling the motion for judgment of acquittal made at the close of all the testimony.

Three.

The trial court erred in sentencing the defendant.

Wherefore, defendant-appellant prays that upon appeal the trial court's judgment be reversed for each and every one of the reasons set forth in the above points upon appeal.

Karl M. Milgrom
Attorney for Defendant-Appellant

• • •



[fol. 76]

[Caption omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH
CIRCUIT

No. 11011

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

ROBERT SIMMONS, DEFENDANT-APPELLANT

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.

DOCKET ENTRIES

Nov. 6, 1953. Filed Transcript of Record.

Nov. 6, 1953. Filed Appearance for Appellant. (K.M. Milgrom)

Nov. 14, 1953. Filed election of counsel to print record.

Nov. 17, 1953. Filed Appearance for Appellee. (Otto Kerner, James B. Parsons.)

Nov. 20, 1953. Filed Appearance for Appellant. (Hayden C. Covington.)

Nov. 20, 1953. Filed Original and 4 copies Petition and Stipulation to extend time for Designation to Dec. 5, 1953.

Nov. 24, 1953. Entered order extending time for Appellant's Designation to Dec. 5, 1953.

Dec. 4, 1953. Filed Appellant's Designation.

Dec. 28, 1953. Filed 50 Copies printed record.

Jan. 14, 1954. Filed 30 Copies Appellant's Brief.

Feb. 17, 1954. Filed Original and 4 copies Motion and Affidavit to extend time for Appellee's Brief to Mar. 22, 1954.

Feb. 23, 1954. Entered order extending time for Appellee's Brief to Mar. 22, 1954.

Mar. 22, 1954. Filed Original and 4 Copies Motion and Affidavit to extend time for Appellee's Brief to Apr. 15, 1954.

Mar. 26, 1954. Filed Original and 4 Copies Answer to Motion.

Mar. 26, 1954. Entered order extending time for Appellee's Brief to Apr. 5, 1954.

Apr. 5, 1954. Filed 30 Copies Appellee's Brief.

April 14, 1954. Filed original and 4 copies Motion to extend time for Reply Brief to Apr. 20, 1954, Affidavit.

Apr. 14, 1954. Entered order granting Motion.

Apr. 20, 1954. Filed 30 Copies Reply Brief.

Apr. 21, 1954. Heard and taken under advisement.

May 7, 1954. Entered order that Appellee's Supplemental Memo be filed nunc pro tunc as of May 4, 1954.

May 7, 1954. Filed 5 typed Appellee's Supplemental Memorandum nunc pro tunc as of May 4, 1954.

Apr. 23, 1954. Filed 4 typed Appellant's Supplemental Memorandum.

Jun. 15, 1954. Filed Opinion by Lindley, C. J.

Jun. 15, 1954. Entered Judgment Affirming.

Jun. 18, 1954. Filed Designation for Supreme Court Record.

[fol. 77] IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT—October Term, 1953, April Session, 1954

No. 11011

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE,

vs.

ROBERT SIMMONS, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

June 15, 1954

OPINION—Filed June 15, 1954

Before Major, Chief Judge, Duffy and Lindley, Circuit Judges

LINDLEY, *Circuit Judge*. Defendant was charged with willfully refusing to submit to induction into the armed forces of the United States in violation of the Universal Military Training and Service Act, 50 App. U. S. C. Sec.

462. He admitted that he had refused to submit, but averred that the induction order was void by reason of the invalidity of his selective service classification which denied his claim of exemption from service as a conscientious objector. This appeal followed a judgment of conviction entered by the court sitting without a jury.

We are faced with a situation where repetition of certain basic concepts may not be amiss. The issues before us, subject as they are to exaggerated emotionalism, are difficult for an impartial arbiter since they demand reconciliation of an apparent conflict between a paramount right of freedom of conscience and religion and an equally paramount duty of every individual to defend his sovereign nation. This conflict is ably discussed in *United States v. Izumihara*, 120 F. Supp. 36. Congress, as the legislative [fol. 78] voice of the sovereign, might have demanded unequivocal support from every person within its jurisdiction when it framed the selective service laws. As an obvious expression of conviction that greater strength lay in the preservation thereby afforded to freedom of conscience than in universal participation in the armed forces, Congress provided an exemption from military service to those who, by reason of their religious training and belief, are conscientiously opposed to participation in war. 50 App. U. S. C. Sec. 456 (j). This exemption, however, is an exception to a general statute applicable to "every male person" within a defined age group, 50 App. U. S. C. Sec. 453, 454 (a), and is, therefore, a privilege extended by legislative grace. To avail one of this privilege, application must be made to the agency established by the statute, the local board, which is empowered to decide each such claim of privilege, subject to administrative appeal as provided by statute. 50 App. U. S. C. Sec. 456 (j).

The task of probing into and intelligently appraising the conscience of another is a difficult and unhappy one; but we should bear in mind that Congress has imposed this onus not upon the courts but upon the local board whose orders "within their respective jurisdictions" are expressly made final "subject to the right of appeal to the appeal boards herein authorized." 50 App. U. S. C. Sec. 460 (b) (3). See *United States v. Adamowicz*, decided March 19, 1954 (N. D. Ill.). Judicial review of such orders is severely

restricted. *Estep v. United States*, 327 U. S. 114. Our duty is done if we be solicitous that our decision on the issues before us accords to the individual defendant due process of law without losing sight of the full purpose of the Act which Congress has determined to be in the best national interest.

The teachings applicable to the general field of administrative law are of little aid in judicial review of orders issued by the selective service agencies. The phrase "within their respective jurisdictions" employed in 50 App. U. S. C. Sec. 460 (b) (3) has been interpreted to limit finality of such orders to those which the administrative agency has jurisdiction to make. In the language of the Supreme Court, this jurisdictional question is reached by the court in any case "only if there is *no basis in fact* for the classification which [an administrative board] gave the registrant." (Emphasis supplied.) *Estep v. United States*, 327 U. S. 114, 122. [fol. 79] Though the scope of judicial review within the "basis in fact" concept lacks exact definition, certain definite conclusions follow from pronouncements by the court in *Estep* and subsequent cases. Obviously the burden is on the claimant to prove himself to be within the group entitled to claim the privilege. The court reviewing an order denying such a claim of privilege may not weigh the evidence. The selective service file may be scrutinized only for the narrow purpose of determining whether any factual basis supports the classification, and in its scrutiny the reviewing court may not require adherence by the administrative body to the niceties of judicial rules of evidence. When and if the court determines that the contested order rests on a basis in fact, its jurisdiction ends, even though the court be convinced that the order is erroneous. See generally *Estep v. United States*, *supra*; *Dickinson v. United States*, 346 U. S. 389; *Cox v. United States*, 332 U. S. 442; *Eagles v. Samuels*, 329 U. S. 304; *Eagles v. Horowitz*, 329 U. S. 317; *Gibson v. United States*, 329 U. S. 338.

Defendant contends, on authority of *Dickinson v. United States*, 346 U. S. 389, that the denial of a conscientious objection claim has a basis in fact only when the board has procured affirmative evidence which contradicts the representations made by a registrant in his application for exemption,—that the board must make a record to support its order. The *Dickinson* opinion has been so construed in

Weaver v. United States, 210 F. 2d 815, 822-823 (CA-8); *Schuman v. United States*, 208 F. 2d 801 (CA-9); and *Jewell v. United States*, 208 F. 2d 770, 771 (CA-6). However, we do not read the decision as authority for this proposition.

Dickinson was convicted of refusing to submit to induction into the armed forces in violation of an order based on a selective service determination that he was not entitled to a claimed minister of religion classification. After reaffirming the "basis in fact" test of *Estep*, the court found no factual basis in the record to support the denial of the claimed exemption. The court said, 346 U. S. at 396-397: "The court below in affirming the conviction apparently thought the local board was free to disbelieve Dickinson's testimonial and documentary evidence even in the absence of any impeaching or contradictory evidence. * * * However, Dickinson's claims were not disputed by any evidence [fol. 80] presented to the selective service authorities nor was any cited by the Court of Appeals. The task of the courts in cases such as this is to search the record for some affirmative evidence to support the local board's overt or implicit finding that a registrant has not painted a complete or accurate picture of his activities. We have found none here. (The court then states that local boards are not bound by traditional rules of evidence and that courts may not apply a test of substantial evidence.) However, the courts may properly insist that there be some proof that is incompatible with the registrant's proof of exemption. * * * When the uncontradicted evidence supporting a registrant's claim places him *prima facie* within the statutory exemption, dismissal of the claim solely on the basis of suspicion and speculation is both contrary to the spirit of the Act and foreign to our concept of justice." Thus the court says that once a registrant has made out a *prima facie* case, which is not contradicted, a denial of the exemption claimed is without factual basis. We cannot apply this principle generally to every case without regard to the quality of the proof made by the registrant.

Furthermore, this language must be interpreted in the light of the claim and proofs made by Dickinson. Thus, a distinction must be drawn, we believe, between a claim of ministerial status and a claim of conscientious objection

status as to susceptibility of proof. Whether a registrant is a minister in the statutory sense, having as his principal vocation the leadership of and ministering to the followers of his creed, is a factual question susceptible of exact proof by evidence as to his status within the sect and his daily activities. No search of his conscience is required. Even though the only tenet of his cult be a belief in war and bloodshed, he still would be exempt from military service if he were, in fact, a minister of religion. Is he affiliated with a religious sect? Does he, as his vocation, represent that sect as a leader ministering to its followers? These questions are determinative and subject to exact proof or disproof.

The conscientious objector claim admits of no such exact proof. Probing a man's conscience is, at best, a speculative venture. No one, not even his closest friends and associates, can testify to a certainty as to what he believes and feels. These, at most, can only express their opinions as to his sincerity. The best evidence on this question may well be, [fol. 81] not the man's statements or those of other witnesses, but his credibility and demeanor in a personal appearance before the fact-finding agency. We cannot presume that a particular classification is based on the board's disbelief of the registrant, but, just as surely, the statutory scheme will not permit us to burden the board with the impossible task of rebutting a presumption of the validity of every claim based oftentimes on little more than the registrant's statement that he is conscientiously opposed to participation in war. When the record discloses any evidence of whatever nature which is incompatible with the claim of exemption we may not inquire further as to the correctness of the board's order.

Conscientious objector cases cannot be rationalized as defendant's argument would have us do and as some courts seemingly have tried to do. Affiliation with a particular religious sect does not *per se* entitle a registrant to conscientious objector status. The duty imposed on the boards is to determine subjectively and objectively the sincerity of the individual's belief, not the nature of the teachings of any religious faith. Each case must stand or fall on its own facts. Were this not true, the mass conversion of males, eligible for the draft, to particular faiths might be justified

merely because of the "hot breath of the draft board" on their necks. *United States v. Izumihara*, 120 F. Supp. 36, 41. Although this does not make every member of any sect suspect, the temptation present for those who would evade the draft is a factor which we should not foreclose the boards from considering on a claim of exemption. We could justify doing so under the Dickinson decision only on proof of a prima facie case for exemption, when the only conclusion possible on the record is that the denial of a claim of exemption is arbitrary and capricious. We could, under such circumstances, impose on the board the burden of making a record to support its order.

The uncontroverted evidence in the Dickinson case was that the draftee had been designated by the governing body of his sect, as a fulltime pioneer minister; that he was the presiding minister over a "Company" encompassing members residing in an area of some 5,000 square miles; that, as presiding minister, he devoted some 150 hours per month to missionary work; that he arranged and presided over some three or four meetings of his "Company" each week; that he instructed prospective ministers, and that his subsistence was derived from the benevolence of his followers and some five hours per week devoted to secular employment. The court found no evidence in the record to contradict this "prima facie" proof of a minister of religion status, and held that this factual proof could not be ignored by the board, in the absence of affirmative evidence to rebut it. The decision does not impose on the boards the burden of rebutting every claim made irrespective of the proof offered by the applicant. So to construe it would be to convert a privilege granted by legislative grace into an absolute right.

Applying these standards, is the order before us arbitrary and capricious, rendering appellant's classification void? We think not. In executing his classification questionnaire (SSS Form 100), appellant did not claim conscientious objector status. He stated that on the basis of "facts set forth in this questionnaire * * * my classification should be I-A." He was given a preliminary classification of I-A, in which he remained for some two and one-half years until June 4, 1951, when he was reclassified III-A (dependency).

On October 22, 1951, appellant was again classified I-A. On October 25, 1951, he requested SSS Form 150 to claim exemption from military service as a conscientious objector (I-O). On October 30, 1951, he was ordered to report for his preinduction physical examination. On the same day he filed Form 150, in which he stated that he was conscientiously opposed to either combatant or non-combatant military service; that his conscientious objection to such service grew out of beliefs acquired through a course of Bible study begun in 1949, under the direction of his sect; that he became a member in November 1949, and that he did not believe in the use of force except under the direction "of Jehovah God." Thereafter, he was given a hearing before his local board, which found the evidence insufficient to require reopening his classification. The appeal board, after submitting appellant's claim to the Department of Justice for investigation and hearing, by unanimous vote, rejected his claim and sustained his classification as I-A.

Defendant contends that the denial of his claim was based solely on the fact that he is a latecomer to his religious beliefs and that he did not assert his claim until some three years after registration, at a time when his induction was [fol. 83] imminent. We agree, as an abstract proposition, that the length of time elapsing since one has espoused a faith, standing alone, will not furnish a decisive basis for denying conscientious objector status. However, we cannot subscribe to the view expressed in *Schuman v. United States*, 208 F. 2d 801, 805 (CA-9), that the board may never take this factor into account. See *Corrigan v. Secretary of the Army*, 211 F. 2d 293 (CA-9), in which defendant claimed he was converted to conscientious objection to war while listening to orientation instruction given immediately before induction. Espousal of certain beliefs coincident with pressing induction demands, when coupled with other evidence which casts doubt on the sincerity of an individual claimant, may well support an inference that the espousal of the religious belief was motivated not by conscience but by a desire to remain a civilian. We cannot close the door to the selective service board's use of any valid inference in ruling on classification questions. To do so would dis-

embowel the statute and refute the express congressional purpose in its enactment.

The government cites certain negative circumstances which it contends support the classification. Appellant did not assert his claim until some two years after he became a member of Jehovah's Witnesses and more than two and one-half years after he had been classified I-A, on his own statement that such classification was proper. His claim was supported only by his own statement. No other members of the sect appeared in his behalf. Affidavits of no other members were filed in his behalf. Considering his claim in the light of those of other members of the sect, as the board was entitled to do, on the evidence of record, we cannot say that its denial of his claim is without basis in fact. *United States v. Dal Santo*, 205 F. 2d 429, cert. denied 346 U. S. 858 (CA-7). The order may well have been erroneous, but on the record before us, excluding reference to the Department of Justice report, we cannot say that it is arbitrary and capricious.

The only evidence in the file not previously referred to is the report of the Department of Justice. Summarizing the F.B.I. investigative file, this report stated that appellant had on three occasions exerted physical violence against, and had abused, his wife, and that, until some seven months immediately preceding the F.B.I. investigation, appellant was reputed to be a heavy drinker and gambler. The Justice Department report stated in part: "The Hearing Officer reports registrant impressed him as sincere but notes that his religious activities are coincident with pressing draft activities by officials and, therefore, recommends a I-A classification. * * * In addition to the fact that his religious activities coincide with pressing induction possibilities, registrant's absorption and sincerity as to his newly found religion is rendered more questionable by his abusiveness and the exercise of physical violence toward his wife. In this connection police records reflect a complaint by his wife as late as January 6, 1952." The point is that these evidentiary factors have a bearing on the question of sincerity. It is immaterial whether we would have concluded that the circumstances mentioned are sufficient to disprove appellant's sincerity.

Their presence of record precludes our saying that the challenged order is without basis in fact.

We thus reach the question of whether appellant was accorded due process of law. He contends that the standards of due process were violated in his hearing before the Department of Justice hearing officer and that this vitiates the induction order. No transcript of the proceedings before the hearing officer appears of record. At his trial, appellant testified that he asked that officer for information as to all unfavorable evidence contained in the F.B.I. investigative report; that he was informed that evidence in this report indicated that he had been hanging around pool halls and that he had been questioned about this facet of his behavior; that the hearing officer evaded his request relative to the other adverse evidence contained in his file, and that this evidence was not made known to him.

Before the trial, at appellant's request, a subpoena *duces tecum* issued to compel the United States Attorney and the Federal Bureau of Investigation to produce this file at his trial. On leave of court, the government moved to quash. Appellant filed an affidavit in opposition to the motion. Therein the contention which forms the basis for our inquiry was advanced, viz., that due process of law requires that a registrant be given a full and fair summary of the unfavorable evidence contained in the F.B.I. report employed by the hearing officer in making his recommendation, and that the report must be produced at a subsequent [fol. 84] trial of the registrant for refusing to submit to induction in order to enable the court to determine whether the officer has complied with the procedural requirements. The court granted the government's motion and quashed the subpoena.

Appellant contends that the Supreme Court in *United States v. Nugent*, 346 U. S. 1, established the rule that registrant must be accorded a full and fair resume of all adverse evidence contained in the F.B.I. file. In *United States v. Nugent*, 200 F. 2d 46, and *United States v. Packer*, 200 F. 2d 540, the Court of Appeals for the Second Circuit reversed the conviction of the defendants, holding that refusal of the Justice Department hearing officer to disclose the F.B.I. reports to defendants was a denial of

due process of law in the induction process which vitiated subsequent orders to submit to induction into the armed forces. On certiorari the Supreme Court reversed these decisions, saying, 346 U. S. at pages 5-6, "We think that the statutory scheme for review, within the selective service system, of exemptions claimed by conscientious objectors entitles them to no guarantee that the F. B. I. reports must be produced for their inspection."

A contention was made that the statute, so construed, was unconstitutional. Reviewing the statutory scheme for selective service procedures, the court held that the "hearing" accorded to claimants of conscientious objector status, though it must be more than sham, does not require a formal judicial hearing comparable to a criminal trial. The court said: "Instead, the word [hearing] takes its meaning * * * from an analysis of the precise function which Congress has imposed upon the Department of Justice in [Section 456 (j)]. The duty to classify—to grant or deny exemptions to conscientious objectors—rests upon the draft boards, local and appellate, and not upon the Department of Justice. * * * The Department of Justice takes no action which is decisive. Its duty is to advise, to render an auxiliary service to the appeal board in this difficult class of cases. * * * [I]n this special class of cases, involving as it does difficult analyses of facts and individualized judgments, Congress directed that the assistance of the Department be made available whenever a registrant insists that his conscientious objection claim has been misjudged by his local board. Observers sympathetic to the problems of the conscientious objector have [fol. 86] recognized that this provision in the statute improves the system of review by helping the appeal boards to reach a more informed judgment on the appealing registrant's claims. But it has long been recognized that neither the Department's 'appropriate investigation' nor its 'hearing' is the determinative investigation and the determinative hearing in each case. It has regularly been assumed that it is not the function of this auxiliary procedure to provide a full-scale trial for each appealing registrant. Accordingly, the standards of procedure to which the Department must adhere are simply standards which will enable it to discharge its duty to forward sound advice, as

expeditiously as possible, to the appeal board. * * * It is always difficult to devise procedures which will be adequate to do justice in cases where the sincerity of another's religious convictions is the ultimate factual issue. It is especially difficult when these procedures must be geared to meet the imperative needs of mobilization and national vigilance—when there is no time for 'litigious interruption.' *Falbo v. United States*, 320 U. S. 549, 554 (1944). Under the circumstances presented, we cannot hold that the statute, as we construe it, violates the Constitution." (Footnotes by the court omitted.) 346 U. S. at 7-10.

Quotation at length from the Nugent opinion is justified, we think, as demonstrative that the court did not presume to establish rules of procedure for the conduct of Department of Justice hearings. Appellant refers us to the language of the court appearing at page 6, "We think the Department of Justice satisfies its duties under Sec. 6(j) when it accords a fair opportunity to the registrant to speak his piece before an impartial hearing officer; when it permits him to produce all relevant evidence in his own behalf and at the same time supplies him with a fair resumé of any adverse evidence in the investigator's report." He contends that by this language the Supreme Court announced the postulate that a fair resumé is a prerequisite to a fair hearing. The government insists, correctly we think, that the only issue before the court, which is pertinent to the question before us, was as to the right to inspect the F.B.I. file and that the last quoted language is *obiter* occurring in approving the procedure followed by the hearing officer in Nugent's hearing.

The government's contention is persuasive when the [fol. 87] above quotations are considered together. Had the court intended to prescribe the minimum procedural rules for such hearings, it is not unreasonable to assume that it would have done so expressly in its discussion on the issue of constitutionality. There the court said that the hearing must be more than "sham" but need not be a "litigious controversy." Thus we are told that somewhere between these two extremes lies the line between due process and arbitrary action. We are told further that the procedure employed by the hearing officer in Nugent's case falls within

the realm of due process. It does not follow from this that the Nugent procedure presents the minimum safeguards which will afford the registrant due process. Furthermore, the court indicated that Nugent and Packer had waived their right to object to any failure on the part of the hearing officer to give them a full summary of the evidence because they had failed to request such a summary. 346 U. S. at 6, n. 10. Thus the issue now facing us was not before the court in *Nugent*.

We are referred to numerous authorities to support appellant's contention. Brief reference to some of them will suffice to dispose of the point. In *United States v. Everngam*, 102 F. Supp. 128, the court held that proof on the face of the report of the hearing officer that his recommendation was based on his own belief, not on his appraisal of registrant's sincerity in his professed belief, to be a denial of due process which vitiated any order based thereon. *Eagles v. Samuels*, 329 U. S. 304, approved the use of theological panels to advise the local board with respect to ministerial claims, provided the information received from the panel be placed in the registrant's file and available to him. *United States v. Balogh*, 157 F. 2d 939 (CA-2), reversed a conviction of a registrant whose classification followed a referral of a claim to what the court found to be an illegally constituted theological panel. In *United States v. Cain*, 149 F. 2d 338 (CA-2), the court held that concealment of the identity of the members of a theological panel from a registrant and adventures of such panel into questions outside of the field of ecclesiastics vitiated an order based thereon. The court in *DeGraw v. Toon*, 151 F. 2d 778 (CA-2), ordered a serviceman released from military custody where his local board had concealed from him damaging evidence in his selective service file on which his classification and induction rested. These authorities are relevant only for the basic postulate [fol. 88] on which each decision rests, namely, that a registrant is entitled "to know and confront the evidence" contained in his selective service file upon which his classification is based. *DeGraw v. Toon*, *supra* at 779, and to appear before a legally constituted advisory agency which will frame its advice on the standards prescribed by the statute.

In *United States v. Bouziden*, 108 F. Supp. 395, the court

held the failure of the hearing officer to inform a registrant of the adverse evidence on which his report and the Justice Department recommendation rested to be a denial of due process. And the Nugent case has been construed as requiring a full summary of adverse evidence contained in the registrant's F.B.I. file, *i.e.*, that failure of a hearing officer to give the registrant such a summary is a denial of due process which vitiates all subsequent proceedings in his case. *United States v. Evans*, 115 F. Supp. 340. This ruling has been followed in *United States v. Edmiston*, 118 F. Supp. 238; *United States v. Stull*, decided Nov. 6, 1953 (E. D. Va.); *United States v. Stasevic*, 117 F. Supp. 371; *United States v. Parker*, decided Dec. 2, 1953 (D. Mont.); and *United States v. Brussell*, Nov. 30, 1953 (D. Mont.). In each of these cases, however, the Evans decision has been adopted without analysis or evaluation. To the extent that these decisions hold that the registrant must be given an opportunity to know and rebut adverse evidence in his selective service file, which file must support a classification order if it is to survive judicial scrutiny, they merely restate accepted principles of due process in selective service cases. Since the F.B.I. file is no part of a registrant's selective service file, the holding in the Evans case that only a full summary by the hearing officer will satisfy due process requirements is, we believe, predicated on error in at least two respects. First, the decision is expressly premised on the postulate that, in a trial for the offense of refusing to submit to induction, the government has the burden of proving the validity of the classification on which the induction order is based. We consider this premise wholly inconsistent with the limited scope of judicial review permitted under the principle announced in *Estep v. United States*, 327 U. S. 114. Secondly, we cannot agree, as we have previously pointed out, with an interpretation of the Nugent case as establishing a full summary as an absolute criterion for measuring the legality of the Justice Department hearing.

[fol. 89] The line between "sham" and a "litigious proceeding" should, we believe, be drawn without regard to procedural rules to meet the requirements of basic fairness consistent with the limitation placed on the statutory provision of finality. If the government must point to secret

evidence to establish any basis in fact for a particular classification, to evidence which the registrant has been denied an opportunity to know and rebut, we do not doubt that the proceeding is so lacking in basic fairness as to require that the classification be declared void. The point to be emphasized, however, is that in any event the government cannot use the F.B.I. file in a criminal trial. We do not read the Nugent case as requiring anything more than that evidence on which a classification order must find its support must have been called to the registrant's attention during the classification process. Applying these principles, we cannot hold that appellant was denied due process of law. As previously pointed out, the record affords a basis in fact for his classification without reference to the Justice Department's report to the appeal board. In view of this fact, we cannot say that the action of the board was arbitrary.

Furthermore, it appears that the hearing accorded appellant conformed to those standards of procedure set forth in Nugent to enable the Department "to discharge its duty to forward sound advice to the appeal board." Assuming *arguendo*, that sound advice is possible only if the hearing officer has heard both sides of the story, the test has still been met. Two types of adverse evidence contained in appellant's F.B.I. file, *i.e.*, evidence of drinking and carousing and evidence of brutality and abuse toward his wife, were referred to in the Department's report to the appeal board. By his own admission, appellant was informed of the first type and was questioned about this conduct. He testified that he informed the hearing officer that he had changed his ways. By his own admission, he and his wife were asked questions relating to his abuse of her. Appellant was present. His wife was present. He was afforded an opportunity to have other witnesses present. Thus, questions were addressed to appellant's witnesses in his presence which were sufficient to inform him of all adverse evidence in the file brought to the attention of the classifying agency, the appeal board. This situation differs only in degree from that before the Supreme Court in *United States v. Packer*, 346 U.S. 1, where the court said at 7, n. 10: "Nor was respondent Packer denied his right to be [fol. 90] advised of the general nature of any evidence in the

FBI report which might defeat his claim. In response to his question, the hearing officer told him there was nothing unfavorable in it. The hearing officer's report, which was transmitted to the appeal board, corroborates this view. Nothing in the FBI report was transmitted to the appeal board, and thus it was given no indication that the FBI report was unfavorable." A complete summary may well be preferable procedure, but it is not the function of the court to require it as the only proper procedure.

In view of what has been said, the contents of the F.B.I. file were irrelevant to any issue before the trial court and the court did not err in quashing the subpoena. *United States v. Evans*, 115 F. Supp. 340, and the line of cases following it are not persuasive authority for requiring production of the F.B.I. file at trials of this nature, because of the basic fallacies in reasoning on which, as we have previously pointed out, those decisions rest.

We do not preclude the possibility of a case of this nature arising in which examination by the court of the F.B.I. file might be necessary if the government is to meet the averment of a denial of due process of law. But this cause does not fall in that category. We should be reluctant to compel disclosure of investigative files in this type of case. As offensive as may be the thought of the nameless, secret, hidden informer, anonymity of persons interviewed is a virtual necessity in this type of case, if the Department of Justice is to be unfettered in its appointed tasks of investigating claims of conscientious objection and of forwarding sound advice to the appeal boards. A holding that these files must be disclosed in every case would effectively tie the hands of the draft officialdom, a result which we should be hesitant to promote.

We must consider briefly a final contention made by appellant. On January 20, 1953, several days after receipt of his notice to report, he submitted to the clerk of his local board a letter from one Charles K. Fetter, M.D., to the effect that his wife was seriously ill and that she was dependent on him for support and care. Appellant testified that he told the clerk he had learned of this condition only on January 16 and requested that his classification be reopened. No action was taken by the board. This refusal of the board to reopen was not, as appellant con-

[fol. 91] tends, an abuse of its sound discretion. A classification "may" be reopened after the registrant has been ordered to report for induction on a "written request" supported by "written evidence" of facts not previously considered by the board, only if the board "specifically finds there has been a change" in status "resulting from circumstances over which the registrant had no control." Selective Service Regulation 1622.2, 32 C.F.R. Sec. 1622.2 Appellant made no written request and submitted no written evidence of facts surrounding his wife's incapacitation on which he relied to support his dependency claim. We cannot say the board abused its discretion.

We conclude that appellant's classification is founded on an adequate basis in fact and that he was not denied due process. The judgment is affirmed.

[fol. 92] IN UNITED STATES COURT OF APPEALS, TUESDAY,
JUNE 15, 1954

Before:

Hon. J. Earl Major, Chief Judge
Hon. F. Ryan Duffy, Circuit Judge
Hon. Walter C. Lindley, Circuit Judge

No. 11011

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

ROBERT SIMMONS, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JUDGMENT—Entered June 15, 1954

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof: It is ordered and adjudged by this Court that the Judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

[fol. 93] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 94-96] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—Filed June 23, 1954

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 14th, 1954.

Sherman Minton, Associate Justice of the Supreme Court of the United States.

Dated this 28 day of June, 1954.

[fol. 97] [File endorsement omitted.]

[fol. 98] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 14, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

